By Mr. MOORE of Pennsylvania: Protests of C. C. A. Baldi, David Phillips, M. Rosenbaum, V. D. Ambrosio, De Laurentis & Teti, American Art Marble Co., Metallic Flexible Tubing Co., all of Philadelphia, in the State of Pennsylvania, against the Gardner immigration bill; to the Committee on Immigration and Naturalization.

Also, petition of the Pennsylvania Match Co., for the Esch phosphorus bill (H. R. 30022); to the Committee on Interstate and Foreign Commerce.

By Mr. MORGAN of Oklahoma: Petition of retail merchants and other citizens of State of Oklahoma, against parcels post; to the Committee on the Post Office and Post Roads.

By Mr. A. MITCHELL PALMER: Petition of American Federation of Labor, for amendment of the oleomargarine law to 2 cents per pound tax; to the Committee on Agriculture.

By Mr. PARSONS: Petition of New York Board of Trade and Transportation, favoring bill (S. 5677) for retirement and relief of the members of the Life-Saving Service; to the Committee on Interstate and Foreign Commerce.

By Mr. RANDELL of Texas: Paper to accompany bill for relief of heirs of Robert Bradley; to the Committee on Claims.

By Mr. SHEFFIELD: Petition of William Loeb, jr., and 32 others for Senate bill 5677, favoring bill for promoting efficiency of Life-Saving Service; to the Committee on Interstate and Foreign Commerce.

Also, petition of the town council of Charlestown, R. I., favoring Senate bill 5677; to the Committee on Interstate and Foreign Commerce.

By Mr. SHEPPARD: Paper to accompany bill for relief of Mrs. W. J. Watts; to the Committee on Invalid Pensions.

By Mr. TILSON: Petition of New Haven Trades Council, for amendment of the tax on oleomargarine to 2 per cent; to the Committee on Agriculture.

By Mr. VREELAND: Petition of Gowanda Grange, No. 1164, Patrons of Husbandry, favoring a parcels-post law; to the Committee on the Post Office and Post Roads.

SENATE.

THURSDAY, *January 19, 1911.*

Prayer by Rev. Henry N. Couden, D. D., Chaplain of the House of Representatives.

The Journal of yesterday's proceedings was read and approved.

SUPPRESSION OF TRAFFIC IN INTOXICANTS AMONG INDIANS.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Interior, transmitting, in response to a resolution of the 13th instant, a report of the chief special officer for the suppression of the traffic in intoxicants among the Indians (S. Doc. No. 767), which, with the accompanying paper, was referred to the Committee on Indian Affairs and ordered to be printed.

CHESAPEAKE & POTOMAC TELEPHONE CO.

The PRESIDENT pro tempore laid before the Senate the annual report of the Chesapeake & Potomac Telephone Co. for the fiscal year 1910 (S. Doc. No. 766), which was referred to the Committee on the District of Columbia and ordered to be printed.

ENROLLED BILL SIGNED.

A message from the House of Representatives, by C. R. McKenney, its enrolling clerk, announced that the Speaker of the House had signed the enrolled bill (H. R. 25057) for the relief of Willard McCall and John M. Wyatt, and it was thereupon signed by the President pro tempore.

PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented a memorial of sundry representatives of the Religious Society of Friends of Pennsylvania, New Jersey, and Delaware, remonstrating against any appropriation being made for the fortification of the Panama Canal, which was referred to the Committee on Interoceanic Canals.

Mr. DIXON presented memorials of sundry citizens of Heron and Red Lodge, Mont., remonstrating against the passage of the so-called rural parcels-post bill, which were ordered to lie on the table.

Mr. SUTHERLAND presented a memorial of sundry citizens of Jensen, Utah, remonstrating against the passage of the so-called rural parcels-post bill, which was ordered to lie on the table.

Mr. WARREN presented a memorial of the Chamber of Commerce of Sheridan, Wyo., and a memorial of sundry merchants of Casper, Wyo., remonstrating against the passage of the so-called rural parcels-post bill, which were ordered to lie on the table.

Mr. CULLOM presented a petition of the Trades and Labor Council of Danville, Ill., praying for the enactment of legislation providing employment for all prisoners on such work as will not place them in competition with free labor, which was referred to the Committee on Education and Labor.

He also presented a petition of Local Union No. 80, International Brotherhood of Blacksmiths and Helpers, of Chicago, Ill., praying for the repeal of the present oleomargarine law, which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of the Trades and Labor Council of Danville, Ill., praying for the enactment of legislation limiting the power of officials in questioning or coercing suspected persons, which was referred to the Committee on the Judiciary.

Mr. HEYBURN presented a memorial of sundry citizens of Coeur d'Alene, Idaho, remonstrating against the passage of the so-called rural parcels-post bill, which was ordered to lie on the table.

He also presented a petition of the Franklin school district of Boise, Idaho, praying for the passage of the so-called parcels-post bill, which was referred to the Committee on Post Offices and Post Roads.

He also presented a petition of Local Lodge No. 2753, Modern Brotherhood of America, of Twin Falls, Idaho, praying for the enactment of legislation providing for the admission of publications of fraternal societies to the mail as second-class matter, which was referred to the Committee on Post Offices and Post Roads.

Mr. SCOTT presented the petition of the editor of the Gassaway Times, of Gassaway, W. Va., praying for the enactment of legislation to prohibit the printing of certain matter on stamped envelopes, which was referred to the Committee on Post Offices and Post Roads.

He also presented a petition of sundry employees of the Norfolk & Western Railway Co. in West Virginia, Virginia, Ohio, Maryland, and North Carolina, praying for the enactment of legislation providing for the admission of publications of fraternal societies to the mail as second-class matter, which was referred to the Committee on Post Offices and Post Roads.

Mr. PAGE presented a memorial of sundry citizens of Hartland, Vt., remonstrating against the passage of the so-called rural parcels-post bill, which was ordered to lie on the table.

Mr. BURKETT presented a petition of the Retail Butchers' Association of Omaha, Nebr., praying for the repeal of the present oleomargarine law, which was referred to the Committee on Agriculture and Forestry.

He also presented memorials of sundry citizens of Neligh, McCook, Grand Island, Omaha, Hastings, Fremont, Stella, Fullerton, and Blair, all in the State of Nebraska, remonstrating against the establishment of a national bureau of health, which were referred to the Committee on Public Health and National Quarantine.

He also presented a petition of the Ladies' Club of Gibbon, Nebr., and a petition of the Woman's Club of Laurel, Nebr., praying that an investigation be made into the condition of dairy products for the prevention and spread of tuberculosis, which were referred to the Committee on Agriculture and Forestry.

He also presented the petition of J. K. Kelley, of Dawson, Nebr., and the petition of James McKenna, of Omaha, Nebr., praying for the adoption of a certain amendment to the so-called old-age pension bill, which were referred to the Committee on Pensions.

He also presented memorials of sundry citizens of Paul, Western, Clarks, Albion, St. Edwards, Axtell, Barada, and Johnstown, all in the State of Nebraska, remonstrating against the passage of the so-called rural parcels-post bill, which were ordered to lie on the table.

He also presented sundry papers to accompany the bill (S. 9814) granting an increase of pension to O. L. Cady, which were referred to the Committee on Pensions.

REPORTS OF COMMITTEES.

Mr. WARREN, from the Committee on Military Affairs, to which was referred the bill (H. R. 710) for the relief of Cornelius Cahill, reported it without amendment and submitted a report (No. 981) thereon.

Mr. McCUMBER, from the Committee on Pensions, to which were referred certain bills granting pensions and increase of pensions, submitted a report (No. 986), accompanied by a bill (S. 10326) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, which was

read twice by its title, the bill being a substitute for the following Senate bills heretofore referred to the committee:

S. 26. John D. Elliott;
S. 734. Edmund B. Updegrove;
S. 745. A. Paul Horne;
S. 748. Dana H. McDuffee;
S. 852. Charles R. Crouch;
S. 855. Mary E. Elwood;
S. 1145. Elisha W. Bullock;
S. 1181. John D. C. Herriman;
S. 1204. Russell C. Harris;
S. 1688. George W. Butterfield;
S. 2304. Charles W. Eaton;
S. 2448. Theodore Parker;
S. 2792. James A. Stephenson;
S. 2934. Lafayette J. Spangle;
S. 3087. William G. Stout;
S. 3227. Eli Dickerson;
S. 3237. Leonard Faulkner;
S. 3240. Samuel Miller;
S. 3242. James E. Simpson;
S. 3297. George Beaumont;
S. 3320. Joshua Minthorn;
S. 3384. Lurinda E. Spencer;
S. 3386. Rowena M. Calkins;
S. 3387. Helen G. Berkele;
S. 3504. Lynderman Wright;
S. 3511. Samuel Gardner Lewis;
S. 3918. John D. Wells;
S. 3939. James A. Montgomery;
S. 3944. Emil Joerin;
S. 3992. Rufus M. Taft (alias Madison R. Baker);
S. 4213. James Inman;
S. 4364. Thomas A. Dunham;
S. 4365. Henry Monnahan;
S. 4483. William H. Bruss;
S. 4816. Annie T. Penrose;
S. 4969. John B. Haley;
S. 5152. Eugene McNair;
S. 5195. James McCartney;
S. 5216. William L. Olmstead (alias Charles R. Campbell);
S. 5324. George Long;
S. 5332. John F. Turner;
S. 5467. Theodore Lynde;
S. 5497. David Wilson;
S. 5514. Thomas C. Crocker;
S. 5774. Charles E. Armstrong;
S. 5888. George Coose;
S. 6038. David Everly;
S. 6054. Eli Masters;
S. 6106. Judson D. Haren;
S. 6112. Henry V. Steiner;
S. 6177. Isaac James;
S. 6308. Peter S. Huffman;
S. 6484. Wallace W. Chaffee;
S. 6517. John H. Cox;
S. 6626. Clark Jaco;
S. 6689. Lydia A. Patch (formerly Lydia A. Wilson);
S. 6774. Henry Harer;
S. 6775. John Patton;
S. 7019. Garrett Conn;
S. 7074. Charles Nolte;
S. 7078. William J. McElhaney;
S. 7116. Thomas Ryan;
S. 7117. Granville Farance;
S. 7150. Orrin Dailey;
S. 7175. Andrew W. Muldrew;
S. 7294. Payne E. Lisenbee;
S. 7325. Marion G. Dunn;
S. 7326. Abraham Friedline;
S. 7335. Elizabeth Kew;
S. 7506. Albert H. Jarnagin;
S. 7508. George T. Myers;
S. 7553. George Jones;
S. 7555. William H. Brady;
S. 7614. William Mott;
S. 7680. Polydore R. Pike;
S. 7774. Christopher Lee;
S. 7825. Samuel C. Jencks;
S. 7853. John A. Wheeler;
S. 7869. Lewis W. Heath;
S. 7871. Joseph Clucas;
S. 7873. James Anthony;
S. 7885. Mary F. Venable;
S. 7920. Amos L. Jones;
S. 8018. Isaac Brinkworth;
S. 8133. James Harvey Emerson;
S. 8138. Amos R. Walters;
S. 8224. John Billings;
S. 8247. Alice Jordan;
S. 8276. Francis Kelley;
S. 8313. Hester S. Crane;
S. 8365. Joshua Burton;
S. 8366. Wiley Burton;
S. 8373. John Brafford;
S. 8422. Nathan W. Dawson;
S. 8423. Frederick O. Hykes;
S. 8446. Michael O'Brien;
S. 8447. James J. Boyd;
S. 8464. Milton Church;
S. 8468. Greenberry Gabbard;
S. 8640. James Thomson;
S. 8652. Abby M. B. Hayes;
S. 8656. James A. Grove;
S. 8734. William W. Eckels;
S. 8750. Henry Pennington;
S. 8837. Alexander C. McKeever;
S. 8841. Elijah N. Brainerd;
S. 8845. Mary Johnson;
S. 8846. Thomas B. Sperry;
S. 8870. Joseph N. Harriman;
S. 8876. William S. Kline;
S. 8877. Brice McKinley;
S. 8879. William H. Moeller;
S. 8896. Lorenzo D. Shaw;
S. 8899. William G. Wade;
S. 8900. Spencer M. Wyman;
S. 8904. Richard Van Dien;
S. 8915. George F. Smith;
S. 8934. Ione D. Bradley;
S. 8976. Judson A. Wright;
S. 9016. John Dearing;
S. 9017. Elmer J. Clark;
S. 9034. Samuel Sharp;
S. 9035. Henry G. Rollins;
S. 9036. James W. Smith;
S. 9064. Henry H. Esty;
S. 9065. Ansel W. Fletcher;
S. 9066. Cordelia Patterson;
S. 9067. Robert C. Pettit;
S. 9070. Charles H. Turner;
S. 9074. Olaus H. Lucken;
S. 9075. James Shaver;
S. 9106. William J. Price;
S. 9111. Smith H. Beeson;
S. 9153. William J. Sterling;
S. 9164. Mary F. Womersley;
S. 9202. William H. Brooks (now known as John Hopkins);
S. 9203. Leonard Koebler;
S. 9206. Frederick A. Reen;
S. 9230. Eugene E. Curtice;
S. 9231. Benjamin F. Stowell;
S. 9236. Jeremiah P. W. Roach;
S. 9319. John Gant;
S. 9380. Hiram W. Crocker;
S. 9431. Benjamin H. Macalaster;
S. 9432. Edward R. Kneeland;
S. 9433. Nettie E. Higgins;
S. 9483. Robert A. Blood;
S. 9494. Thomas L. G. Hansard;
S. 9517. Charles H. Videtto;
S. 9568. Marshall M. Clothier;
S. 9574. Dennis Sullivan;
S. 9616. David Ball;
S. 9622. Leander Eddy;
S. 9632. William H. Blaker;
S. 9664. Jacob A. Davis;
S. 9686. Clement G. Moody;
S. 9687. Benjamin F. Morse;
S. 9689. Isaac C. Vaughan;
S. 9690. Roscoe D. Dix;
S. 9730. Michael Lennane;
S. 9763. John Milton Ralston;
S. 9974. James W. Bodley;
S. 9996. William H. Davisson;
S. 10003. Alonzo J. Batchelder;
S. 10005. Richard H. Hankinson;
S. 10065. Byford E. Long; and
S. 10204. Grace V. D. Spencer.

Mr. McCUMBER, from the Committee on Pensions, to which were referred certain bills granting pensions and increase of pensions, submitted a report (No. 987), accompanied by a bill (S. 10327) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and certain soldiers and sailors of wars other than the Civil War, and to widows and dependent relatives of such soldiers and sailors, which was read twice by its title, the bill being a substitute for the following Senate bills heretofore referred to the committee:

S. 3701. Joseph Phillips;
S. 3946. August Siebrecht;
S. 4038. Pearl M. Welch;
S. 4880. Pauline S. Bloom;
S. 4958. William Horrigan;
S. 7584. Helen J. Sharp;
S. 7974. Kate M. Armstrong;
S. 8308. Ralph C. Fesler;
S. 8479. John D. Harrell;
S. 8508. Edward O. Berg;
S. 8541. Ferdinand Imobersteg;
S. 8603. John C. Tripp;
S. 8772. Louisa A. Thatcher;
S. 8914. Mary Andrews;
S. 9127. Ada J. Swaine;
S. 9225. Robert L. Ivey;
S. 9227. James J. Raulerson;
S. 9229. Elizabeth P. Bell;
S. 9325. Sarah E. Dean;
S. 9438. James M. S. Wilmot; and
S. 9635. Emma M. Heines.

Mr. WARNER, from the Committee on Military Affairs, to which was referred the bill (H. R. 17729) for the relief of James F. De Beau, reported it without amendment and submitted a report (No. 982) thereon.

Mr. BRADLEY, from the Committee on Claims, to which was referred the bill (S. 10141) to carry into effect the findings of the Court of Claims in the claim of Elizabeth B. Eddy, reported it with an amendment and submitted a report (No. 985) thereon.

Mr. FRYE, from the Committee on Commerce, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

S. 10257. An act establishing a light and fog-signal station at Portage River Pierhead, Mich. (Rept. No. 983); and

S. 10256. An act establishing a light and fog-signal station on Michigan Island, Lake Superior (Rept. No. 984).

FORT D. A. RUSSELL MILITARY RESERVATION.

Mr. WARREN. I am directed by the Committee on Military Affairs, to which was referred the bill (S. 9904) granting certain rights of way on the Fort D. A. Russell Military Reservation at Cheyenne, Wyo., for railroad and county road purposes, to report it favorably without amendment, and I submit a report (No. 980) thereon. It is a trifling right-of-way matter, and I ask consent for its immediate consideration.

The PRESIDENT pro tempore. The bill will be read to the Senate for its information.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

HANS N. ANDERSON.

Mr. STONE. I desire, if there is no objection, to call up at this time and dispose of the motion which I entered yesterday to reconsider the vote by which the bill (H. R. 20072) for the relief of Hans N. Anderson was indefinitely postponed.

The PRESIDENT pro tempore. The question is on the motion of the Senator from Missouri to reconsider the vote by which the bill was indefinitely postponed.

Mr. DAVIS. Mr. President, the bill was reported from the Committee on Claims adversely and asked to be indefinitely postponed. It is a very small matter, involving only $66 for carrying the mail by the applicant from Davenport, Iowa, to Green Tree, Iowa. The bill was passed by the House, but the Committee on Claims of the Senate under the report of the department thought it unwise to recommend its passage, because the department reported that the acting postmaster had no authority to make the employment.

However, I am sure the Committee on Claims will have no objection to having the bill recommitted to them that the applicant or some representative of him may appear before the committee.

Mr. STONE. I desire simply to have an opportunity to present the matter to the committee.

The motion to reconsider was agreed to.

Mr. STONE. I move that the bill be re-referred to the Committee on Claims.

The motion was agreed to.

BILLS INTRODUCED.

Bills were introduced, read the first time, and by unanimous consent the second time, and referred as follows:

By Mr. TALIAFERRO:

A bill (S. 10328) to authorize the location of a branch home for disabled volunteer soldiers, sailors, and marines in the State of Florida; to the Committee on Military Affairs.

By Mr. BANKHEAD:

A bill (S. 10329) granting a pension to Daniel S. Jones (with accompanying papers); and

A bill (S. 10330) granting a pension to William M. Hall (with accompanying papers); to the Committee on Pensions.

By Mr. BEVERIDGE:

A bill (S. 10331) for the relief of Aaron F. Adams; and

A bill (S. 10332) for the relief of Joseph Elshire; to the Committee on Military Affairs.

By Mr. BURKETT:

A bill (S. 10333) granting an increase of pension to Charles L. Beetem (with accompanying papers); to the Committee on Pensions.

By Mr. HALE:

A bill (S. 10334) granting an increase of pension to Alphonso H. Mitchell (with accompanying papers); to the Committee on Pensions.

By Mr. WARREN:

A bill (S. 10335) granting an increase of pension to Harry G. Binger; to the Committee on Pensions.

By Mr. GORE:

A bill (S. 10336) authorizing the Secretary of the Interior to sell a certain 40-acre tract of land; to the Committee on Indian Affairs.

A bill (S. 10337) granting a pension to Aubrey P. Lawrence;

A bill (S. 10338) granting an increase of pension to Edward Kightlinger (with accompanying papers); and

A bill (S. 10339) granting an increase of pension to Alfred H. Miller (with accompanying papers); to the Committee on Pensions.

By Mr. BURNHAM:

A bill (S. 10340) granting an increase of pension to Theodore Clark (with accompanying papers); to the Committee on Pensions.

By Mr. CRANE:

A bill (S. 10341) granting an increase of pension to Charlotte Lewis; to the Committee on Pensions.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. HEYBURN submitted an amendment proposing to appropriate $500 to reimburse the State Board of Regents of the University of Idaho for the premium paid on an indemnity bond on account of the loss of a United States draft for $25,000, etc., intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Appropriations and ordered to be printed.

Mr. DU PONT (by request) submitted an amendment relative to the retirement of officers of the Army who have reached the age of 64 years, etc., intended to be proposed by him to the Army appropriation bill; which was referred to the Committee on Military Affairs and ordered to be printed.

Mr. NELSON submitted an amendment relative to the proposed increase in the salaries of Federal judges intended to be proposed by him to the legislative, etc., appropriation bill, which was ordered to be printed, and, with the accompanying paper, referred to the Committee on the Judiciary.

Mr. FOSTER submitted an amendment proposing to appropriate $25,000 for removing obstructions deposited by storms at the mouth of Bayou La Fourche, La., etc., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

FORTIFICATION OF THE PANAMA CANAL.

Mr. MONEY. Mr. President, I submit a resolution, which I send to the desk and ask to have read.

The Secretary read the resolution (S. Res. 325), as follows:

Resolved, That it is the sense of the Senate that the Panama Canal should be fortified.

Mr. MONEY. I ask that the resolution lie on the table, as I desire to call it up later for the purpose of submitting some remarks upon it.

The PRESIDENT pro tempore. The resolution will lie on the table and be printed as requested by the Senator from Mississippi.

BATTLESHIP MAINE.

Mr. HALE. I present a communication from the Secretary of War transmitting a letter from the Chief of Engineers relative to the progress made in connection with the raising of the wreck of the battleship *Maine* in the harbor of Habana, Cuba. I move that the communication and accompanying papers be printed as a document (S. Doc. No. 765) and referred to the Committee on Appropriations.

The motion was agreed to.

LANDS AT COLORADO SPRINGS, ETC.

The PRESIDENT pro tempore. The morning business is closed, and the calendar under Rule VIII is in order.

Mr. GUGGENHEIM. I observe that the bill (S. 7668) to grant certain lands to the city of Colorado Springs, the town of Manitou, and the town of Cascade, Colo., has been placed under Rule IX. I ask unanimous consent that it be taken out of that order of business and restored to the calendar under Rule VIII.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Colorado? The Chair hears none, and that order is made.

REPORT ON EMPLOYMENT OF WOMEN AND CHILDREN.

Mr. FLETCHER. I ask that resolution 323 be laid before the Senate.

The PRESIDENT pro tempore. The Chair lays the resolution before the Senate.

Mr. BEVERIDGE. Will the Senator from Florida yield to me for just a moment?

Mr. FLETCHER. I yield to the Senator from Indiana.

Mr. BEVERIDGE. I thank the Senator.

Mr. President, I desire the attention of the Senator from Utah [Mr. SMOOT], the chairman of the Committee on Printing, for a moment.

More than three years ago Congress enacted a law directing the Department of Commerce and Labor to make a thorough investigation into the employment of women and children in the various industries of the country, notably mines and factories. At the last session I introduced a resolution, which was at once passed, calling upon the Department of Commerce and Labor to make a report, and it was so made, and ordered to be printed. It is now approaching a year, certainly it is nine months, since that order of the Senate was made. I am informed that the report has gone to the Government Printing Office, and yet only one section of the report has been printed.

I should like to ask the chairman of the Committee on Printing why it is that the report has not been printed. At least parts of it that have not been printed were in the hands of the Government Printing Office, as I am informed, before Congress convened, and there has been more than ample time for the printing, and yet the material has not been printed and laid before us.

Mr. SMOOT. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Indiana yield to the Senator from Utah?

Mr. BEVERIDGE. Certainly; I asked a question.

Mr. SMOOT. I desire to say to the Senator that the report from the Secretary of Commerce and Labor, as stated by him, was ordered to be printed. Volume 1 of that report has already been printed.

Mr. BEVERIDGE. Yes.

Mr. SMOOT. Volume 2 is now on the press. The report will consist of at least 20 volumes. As soon as the Printing Office gets the proof print they send it to the Bureau of Labor, and the Bureau of Labor corrects the proof. I will say to the Senator that just as fast as it is corrected by the Bureau of Labor the Public Printer puts it upon the press, and if there is any delay at all it is not on account of the Printing Office. The Public Printer is not responsible for the delay, but it is on account of the proof print not being promptly proof read by the Bureau of Labor.

Mr. BEVERIDGE. Mr. President, I do not reflect on anybody, but I take it that this Congress does wish that the report which it ordered an executive department of this Government to make and the printing of which the Senate ordered the printing establishment to do shall be laid before us. It is perhaps the largest humane subject that is now engaging the attention of the American people, and yet there has been what, to me, seems an unreasonable delay. I am informed—perhaps the Senator can correct me about that, and I hope he will, if I am wrong—that this second volume was in the hands of the Printing Office long before Congress convened.

Mr. SMOOT. I do not know just what time it was returned, but I do know that it is now on the press. I will also say to the Senator from Indiana that it will be midsummer before they can possibly get out the other 18 volumes.

Mr. BEVERIDGE. In other words, then, it will be more than a year—a year and a half—from the time the report was completed, from the time that the Senate by resolution ordered it to be made to the Senate and printed, before it can be printed. Still, we ought to have what is now available, and all that we need and all that exists, so far as the report is concerned, on an important—the most important—phase of the subject; all that we need for discussion and action and all that exists.

Mr. SMOOT. That will all depend upon whether the Public Printer gets the print proof read on time. The Senator from Indiana certainly would not like the report printed without being proof read. I will say that the Printing Office will print the report just as quickly as it can get the material in hand; and the other 18 volumes, I am told by the Public Printer, will not be out until midsummer.

Mr. OVERMAN. Was that matter authorized to be printed by the Senate?

Mr. BEVERIDGE. It was directed to be printed by the Senate. We have some hope, then, Mr. President, of getting just one-eighth—less than one-eighth——

Mr. SMOOT. One-tenth.

Mr. BEVERIDGE. One-tenth—but that will be enough, as I have said—of this report before the present session closes. But that will be sufficiently illuminating no doubt. I merely wanted to find out from the chairman of the committee precisely where we stand with reference to the facts that have been gathered during the last four years under the direction of a mandatory law, the results of which are not yet laid before us.

Mr. SMOOT. Mr. President, the Senator from Indiana can rest assured that just so soon as the material is in the hands of the Public Printer and is proof read there will be no time wasted in getting it out to the public.

Mr. BAILEY. Mr. President, might I ask if this voluminous document is the report of a commission appointed under the authority of law?

Mr. SMOOT. It is a report from the Department of Commerce and Labor in answer to a resolution of the Senate.

Mr. BEVERIDGE. Under an act.

Mr. SMOOT. Well, an act.

Mr. OVERMAN. It has cost $300,000 to make that investigation.

Mr. BEVERIDGE. A law was passed, I will state to the Senator from Texas, if he will permit me to answer his question, nearly four years ago—I do not think I am far wrong—a few months perhaps one way or the other, but over three years ago—directing the Department of Commerce and Labor to make this investigation. I believe the law itself carried the appropriation therefor. The investigation was made under the direction of this mandatory statute, and the Senate last session called for the report of the department of the investigation made under the direction of that law. That is the situation.

Mr. BAILEY. Mr. President, I am not much inclined to repeat in the Senate anonymous stories that come to me; I am not even inclined to repeat things which are related to me personally by gentlemen whom I do not know, but there have been some things stated to me about this particular work that do not give me a very high confidence in the value of it. If I could prevent even now the printing of this report, I would do so, until we could know whether or not any part of the report had been made and then ordered to be remade. I have heard it so stated.

Mr. OVERMAN. May I interrupt the Senator?

Mr. BAILEY. Certainly.

Mr. OVERMAN. It came to my ears that there were words in these reports so vile and slanderous upon our people, and the matter of the reports so obscene, that I went to Secretary Nagel himself and asked him to examine them. He told me some of it was so vile that it could not go into the report. That is how some of the money was spent—not in reporting conditions in our industrial institutions, but they have been up in the mountain sections of the South and other sections of the country reporting upon the domestic concerns of our people. I could not repeat in this presence some of the reports that have been made to the Secretary. I hope those things are not to be printed.

Mr. BEVERIDGE. Any information if unconnected with the subject was not within the purview or authority of the law.

Mr. OVERMAN. Certainly not.

Mr. BEVERIDGE. As I remember it, the law directed that the facts should be gathered, that investigation should be made

into the employment of women and children in factories and mines particularly, and perhaps in some other industries. Of course, the law best speaks for itself. It was introduced by the honorable Senator from Iowa, Mr. Dolliver, who is now deceased. It directed the Department of Commerce and Labor to investigate the facts concerning the employment of women and children in factories, in mines, and in similar industries where the employment of children has become a great and growing evil.

INTERIOR DEPARTMENT AND FOREST SERVICE.

The PRESIDENT pro tempore. The Chair lays before the Senate the Senate resolution 323 relative to the findings and conclusions in the report of the committee which investigated the charges against the Secretary of the Interior, on which the Senator from Florida [Mr. FLETCHER] has the floor.

Mr. FLETCHER addressed the Senate. After having spoken for some time,

The PRESIDENT pro tempore. The hour of 2 o'clock having arrived, the Senator from Florida will suspend while the Chair lays before the Senate the unfinished business, which will be stated.

The SECRETARY. A bill (S. 6708) to amend the act of March 3, 1891, entitled "An act to provide for ocean mail service between the United States and foreign ports and to promote commerce."

Mr. GALLINGER. I ask unanimous consent that the unfinished business be temporarily laid aside.

The PRESIDENT pro tempore. The Senator from New Hampshire asks unanimous consent that the unfinished business be temporarily laid aside. Is there objection? The Chair hears none and that order is made. The Senator from Florida will proceed.

Mr. FLETCHER. Mr. President, in pursuance of "joint resolution authorizing an investigation of the Department of the Interior and its several bureaus, officers, and employees, and of the Bureau of Forestry, in the Department of Agriculture, and its officers and employees," approved January 19, 1910, the committee selected under said resolution met and organized on the 22d day of January, 1910, electing Hon. KNUTE NELSON chairman and Mr. Paul Sleman clerk, and on the 26th day of January, 1910, proceeded with the examination of witnesses. Messrs. Louis D. Brandeis and Joseph P. Cotton appeared as counsel for Mr. Louis R. Glavis; Messrs. George W. Pepper and N. A. Smyth later appeared as counsel for Mr. Gifford Pinchot.

After the investigation began and on the 11th day of February, 1910, Messrs. John J. Vertrees and Carl Rasch appeared as counsel for Secretary R. A. Ballinger. (Record, p. 411.)

From two to four days each week were devoted to this investigation since it began and until it terminated May 28, 1910; some 45 days were consumed in taking testimony, the last two days being taken up by argument of counsel, the privilege of filing briefs within 15 days thereafter being allowed. The testimony and exhibits comprise some seven volumes, and to review them in detail would make almost another volume, and I shall therefore condense as much as possible and state the facts as they developed, citing the pages of the record for verification of every statement.

The report of Mr. L. R. Glavis to the President, dated August 11, 1909, supplemented by letter of September 3, 1909, pages 63 and 64, Senate Document No. 248, may be regarded as the basis of the investigation. (S. Doc. No. 248, pp. 23, 64.) At least that was the first statement asserting and tending to show a condition of things which, if true, plainly called for prompt and certain correction.

The statement is plain and definite. If the matters stated to be true were true, the public interest required an investigation, and the Secretary of the Interior so recognized when he asked for this. At his suggestion the Forest Service was included. The statement of Mr. Gifford Pinchot, former Chief of the Forest Service, should be considered as the original, affirmative statement from the standpoint of that service against the Interior Department, its head, and subordinates. If the matters embraced in that statement are true and those given as believed to be true, were true, then a condition existed which the public interest demanded should be changed and set right. (Record, p. 1143.)

If the statement by Secretary Ballinger (p. 66 et seq., S. Doc. 248) in reply to the statement of Mr. Glavis, and the statement by counsel for the Secretary (pp. 2383–2393 of record) be true then no wrong has been done, and there has been no danger to the public interest, no violation of official trust, and no real cause for the apprehension and belief expressed by Mr. Glavis and Mr. Pinchot.

There seems to be no affirmative charge or statement tending to show official misconduct or dereliction of duty or unfaithfulness to public service lodged against the Forest Service or its officers or employees, except, possibly, insubordination, as to some of them.

The inquiry has been directed along the lines of these statements and counter statements, and the committee has not seen fit to extend the investigation into other fields and directions, independent of counsel and outside of these matters, except only in a few instances and to a limited extent, as examination of witnesses called by the committee or by counsel, might incidentally lead to lines of inquiry which would be regarded as relevant under the resolution. The testimony and proceedings and argument of counsel are on file and accessible and reference will be had to them.

THE LAWS.

The laws concerning coal lands in Alaska will be found as follows:

1. Act approved June 6, 1900, to extend the coal-land laws to the District of Alaska.

The lands in Alaska had never been surveyed, and this act was of little, if any, consequence or effect.

2. An act approved April 28, 1904 (record, p. 308), and regulations thereunder (record, p. 318), which provided any person or association of persons qualified to make entry under the coal-land laws of the United States who shall have opened or improved a coal mine or coal mines may locate the lands on which such mine is situated, in rectangular tract, containing 40, 80, or 160 acres, marking the four corners, and within one year file for record in the recording district and with register and receive a notice containing name of locator, date of location, description of the lands, and reference to boundaries and monuments. Within three years from date of notice the locator or assigns were required to present application for patent to register and receiver of the land district, accompanied by certified copy of a plat of survey and field notes made by United States deputy or mineral surveyor, and make a payment of $10 per acre for lands applied for, provided notice of such application is published 60 days in a newspaper and posted and such proof as land laws require is furnished, as set forth in the act. This is the act under which the Cunningham claimants are seeking to obtain patents.

3. Act approved May 28, 1908, to encourage the development of coal deposits in the Territory of Alaska, which provided that—

> All persons, their heirs or assigns, who have in good faith * * * made locations of coal land in the Territory of Alaska in their own interest prior to November 12, 1906, or in accordance with circular of instructions issued May 16, 1907, may consolidate their claims or locations by including in a single claim, location, or purchase not to exceed 2,560 acres of contiguous lands, etc.

Section 2 gave preference to the Army and Navy. Section 3 contained antitrust provisions. (S. Doc. 248, p. 174; Sup., 155.)

The acts regarding irrigation and reclamation are given on pages 4232, 4233, and 4234 of the record.

The principal act was approved June 17, 1902.

The old rules and regulations are given at page 299 of the testimony and the new ones at page 308.

The rules and regulations—rule 27—under act of 1904, provide that "no person will be permitted to act as such agent for more than four applicants."

Section 39, act of June 17, 1902, authorizes the Secretary of the Interior to make withdrawal of lands for reclamation purposes.

There appear to be some 27 reclamation projects under way, which have already cost the Government, in round numbers, $50,000,000, and which will require some $70,000,000 more to complete.

THE LAWS RELATING TO FOREST SERVICE.

In 1876 $2,000 was appropriated to investigate timber conditions.

June 30, 1886, a Division of Forestry in the Department of Agriculture was created.

July 1, 1901, this division was made a bureau.

The administration of the Government forest lands remained in the Department of the Interior.

March 3, 1891, the President was authorized to establish forest reserves.

March 3, 1905, the Forest Service was created.

Under act of March 4, 1907, forest reserves "shall hereafter be known as national forests."

June 4, 1897, an act was passed which, with subsequent amendments, provided for the administration of the national forests.

By act of February 1, 1905, the Secretary of Agriculture was given entire jurisdiction over the national forests, except as to surveying and conveying title.

Act of June 27, 1906, provides for entry of agricultural lands.

March 4, 1907, the agricultural appropriation act was approved, containing a provision that "hereafter no forest reserve shall be created nor shall any addition be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by act of Congress."

Just here a rather remarkable thing occurred. On March 1 and 2, 1907, proclamations were issued withdrawing additional areas in the said six States, and in the following amounts, respectively:

	Acres.
Colorado	2,777,252
Idaho	1,050,223
Montana	3,192,340
Oregon	3,962,807
Washington	4,279,900
Wyoming	383,109
Total	15,645,631

The national forests in Alaska were increased in area from 4,909,880 acres in April, 1907, to 26,761,626 acres, February, 1908.

The grand total of 150 national forests December 31, 1909, amounted to 194,496,354 acres.

National monuments within national forests erected under act of June 8, 1906, for the preservation of objects of historic or scientific interest, in California, New Mexico, Arizona, South Dakota, Oregon, Colorado, and Washington, amounted in area to 1,426,380 acres.

National game preserves within national forests for the protection of wild animals are established in Arizona and Oklahoma and amount to 1,550,048 acres.

Beginning with $2,000 in 1876, the total estimate for the expenses of the Forest Service for the fiscal year 1910 was $6,071,500. Then, under the act of June 30, 1906, a special fund is provided for Forest Service.

Various laws have been passed relative to rights in national forests, for example, timber for Reclamation Service, February 8, 1905; railroad right of way, March 3, 1875; irrigation projects, March 3, 1891; electricity and rates, February 15, 1901; agricultural settlement, June 11, 1906; trespass and fire laws, Revised Statutes, section 2461, June 3, 1878; cutting timber for turpentine, June 4, 1906; fencing, February 25, 1885; trespass, June 4, 1897; fires, May 5, 1900; protection of birds, June 28, 1906, and so forth.

March 28, 1908, the Secretary of the Interior held that lands may be withdrawn from entry for use as administrative sites by the Forest Service. (Use Book, p. 284.)

THE OFFICERS AND DUTIES.

Section 190, Revised Statutes, provides:

It shall be unlawful for any person appointed after the 1st day of June, 1872, as an officer or employee in any departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments while he was such officer, clerk, or employee, nor in any manner, nor by any means to aid in the prosecution of any such claims, within two years next after he shall have ceased to be such officer, clerk, or employee. (Comp. 1493 et seq.)

Act of July 4, 1884 (p. 5097), provides:

That the Secretary of the Interior may prescribe rules and regulations governing the recognition of agents, attorneys, and other persons representing claimants before this department.

In pursuance of this statute the Secretary of the Interior promulgated rule 8 (p. 3634), which is as follows:

SEC. 8. No person who has been an officer, clerk, or employee of this department within two years prior to his application to appear in any case herein shall be recognized or permitted to appear as an attorney or agent in any such case as shall have been pending in the department at or before the date he left the service: *Provided*, This rule shall not apply to officers, clerks, or employees of the Patent Office nor to cases therein. (Record, p. 3634.)

This rule or regulation is still in force.

The present Secretary of the Interior, Mr. Ballinger, was Commissioner of the General Land Office from March 5, 1907, until March 5, 1908, when he resigned to resume the practice of law in Seattle, Wash., as a member of the firm of Ballinger, Ronald, Battle & Tennant. He was consulted regarding Alaskan affairs and was engaged particularly by Clarence Cunningham and associates to prepare and present to the then Secretary of the Interior, Mr. Garfield, an affidavit of Clarence Cunningham, respecting some 33 claims known as the Cunningham claims or group.

He was a member of the Republican campaign committee, assisted in the national election of 1908, solicited campaign funds, and was otherwise politically active. He had to some extent social, professional, and political relations with various members of the Cunningham group of claimants. On March 4, 1909, he entered upon the duties of Secretary of the Interior.

Mr. Pinchot was Chief of the Forest Service from July 1, 1898 (record, p. 1145), to January 7, 1910. (Record, p. 1289.)

There was a Commission of Forestry as far back as 1876. A Division of Forestry was created in 1882, and the creation of National Forestry began March 3, 1891. (Record, p. 1145.)

Mr. Glavis entered the Land Office in September, 1902, was appointed special agent, General Land Office, in April, 1904, and later became Chief of Field Division at Oakland, Cal., was transferred to Portland, Oreg., and later to Seattle, Wash., and there was discharged September 18, 1909, by telegram from the Secretary, dated September 16, 1909. (Record, p. 887.)

Mr. Pierce became First Assistant Secretary of Interior and ex officio Acting Secretary during absence of the Secretary, November 1, 1907, and prior thereto was an attorney at law in Salt Lake City, Utah. (Record, p. 2958.)

Mr. Schwartz became Chief of the Field Service in the General Land Office in April, 1907. (Record, p. 4235.)

Mr. Dennett was Assistant Land Commissioner while Mr. Ballinger was Commissioner and became Commissioner of General Land Office March 5, 1908, and so continues.

The Interior Department consists of a number of bureaus and quasi bureaus, to wit:

The General Land Office, having supervision and control of the public lands in the States and Territories of the United States and in Alaska; the Indian Bureau; the Pension Bureau; the Patent Office; Bureau of Education; the Geological Survey; and the Reclamation Service. In addition to the foregoing, the Territories, consisting of Alaska, Hawaii, New Mexico, Arizona; the national parks, including the Yellowstone and Yosemite; the Hot Springs Reservation and bird reservations are under the control and management of this department, as also are the eleemosynary institutions, such as Government Hospital for the Insane, Freedmen's Hospital, Howard University, and Columbian Institution for Deaf and Blind.

In the year closing June 30, 1909, the Department of the Interior expended about $193,000,000.

The Forest Service was a Division of Forestry in the Agricultural Department about 1882. There was a commission of forestry in 1876. It became a bureau in 1901. Upon the transfer of the care of the national forests, then called forest reserves, from the Interior Department to the Department of Agriculture February 1, 1905, it became a service. In 1898 it had an appropriation of $28,520 a year. The present appropriation is over $5,000,000 per annum. (Record, p. 1145.)

The force consists of a Chief Forester and about 2,000 employees in the field and about 1,000 officers and people in the main and district offices. The whole force is about 3,000. (Record, p. 1484.)

The salaries range from $720 per annum for guards to $2,500 for supervisors. The rangers are in the classified service.

ANSWER OF SECRETARY BALLINGER.

Secretary Ballinger states, in his letter to the President dated September 4, 1909, among other things:

1. The letter of Miles C. Moore, May 24, 1909, caused him "to inquire whether the opinion of the Attorney General had been secured interpreting the act of May 28, 1908." (S. Doc. 248, p. 66.)

That the Cunningham group of entries were not involved.

2. That Glavis's going to the Attorney General had nothing to do with the question being submitted to him.

3. In the winter of 1907 ex-Gov. Miles C. Moore called upon him, then Commissioner of the General Land Office, and inquired into status of Cunningham group of coal claims in Alaska. He reported by H. H. Schwartz, Chief of Field Division; Love's favorable report was basis of action then taken, clear listing them for patent; that the Jones report of August, 1907, did not refer to the Cunningham claims.

4. Glavis's telegram of January 22, 1908, caused him, after conference with Secretary Garfield about the matter, to recall the entries and to hold them for further orders, awaiting full investigation.

5. Later, on inquiry by Gov. Moore, he stated further investigation was necessary.

6. In the summer of 1908 Cunningham called on him, complaining of the manner he had been treated, particularly respecting his affidavit and journal.

7. At different times during the summer of 1908 he had communications wtih Clarence Cunningham; C. J. Smith, of Seattle; John A. Finch, of Spokane; and Henry Wick, of Ohio, in regard to these entries.

8. He drew an affidavit for Cunningham, and Smith and Cunningham earnestly solicited him "to call on Secretary Garfield to see if anything could be done with their claims looking to patent." He consented to see both Secretary Garfield and Com-

missioner Dennett and made a special trip to West Mentor and contended with both officials that the Cunningham journal "was not proper evidence to show conspiracy." Both officials were firm in the position that the claimants must bring themselves under the law of May 28, 1908, and he so advised Cunningham and Smith.

9. He had drafted the Cale bill as Commissioner of the General Land Office, the act of May 28, 1908, being an outgrowth of that bill.

10. He received $200 or $250 to cover expenses in connection with the trip East and no fee was charged "unless the surplus of this money was applied for services."

11. He saw Smith and Cunningham after visit East and advised them. Later he gave Smith a copy of Judge Hanford's opinion in the Portland Coal & Coke Co. case, which Glavis had furnished him.

12. He abandoned further connection with these cases, because the parties declined to take advantage of the law of May 28, 1908. Later, that fall, Finch, Cunningham, Wick, and one other conferred with him about the matter and he stated he "did not believe the department would grant the patents in view of the record under the law of April 28, 1904; that proceedings were likely to be brought at an early date seeking to cancel their entries unless they undertook to incorporate and bring themselves under the act of May 28, 1908. Smith contended they could not finance and operate the mines under that act. This ended his connection with the Cunningham group.

13. After becoming Secretary of Interior he called in Pierce (next door), Schwartz, and Dennett "and directed speedy action be taken looking toward the adjustment of the coal situation in Alaska." Therefore telegram to Glavis, March 10, 1909. (Record, p. 70.) At this time he advised the said officers that "he had during the summer in a measure advised those people in connection with the Cunningham group of claims and had prepared articles of incorporation for two or three companies proposing to consolidate under the law of May 28, 1908." He held himself disqualified and wanted the cases taken over and handled by Mr. Pierce. There were some 963 suspended coal claims in Alaska and, while he had determined to have nothing to do with the Cunningham cases, he intended to see that there was action taken respecting the entire field.

14. Mr. Finney, Assistant to the Secretary, prepared statement and request for opinion of Attorney General pursuant to conversations had respecting importance of securing interpretation of act of May 28, 1908.

15. About middle of May, 1909, ex-Gov. Miles C. Moore called about the Cunningham cases and was referred to Mr. Pierce. His letters of May 22, 1909 (record, p. 71), and May 24 (record, p. 72), and the Secretary's letters of May 24 and May 27 (record, p. 73) followed. The first expresses disappointment and contains significant language. So does the second. The replies are likewise suggestive.

16. Later, Cunningham and his attorney, John P. Gray, called on him and inquired about their coal claims, and they were referred to Mr. Pierce.

17. About July 16 Mr. Glavis called on him in Seattle complaining he was being forced to a hearing before he could get certain evidence from Alaska, and he was referred to Schwartz. (See correspondence, p. 74.)

18. He has more or less acquaintance and friendship with all the prominent men in Washington. Conferred with Agent Jones two or three times in summer of 1907 at Seattle. December 28, 1907, Glavis was given full charge of coal-land investigations in Alaska.

19. He denies that Glavis in December, 1907, verbally advised him, as Commissioner of General Land Office, that practically all the claims were fraudulent.

20. Says Forest Service had no jurisdiction over coal locations or entries.

21. July 25, 1909, he wrote Schwartz from Boise, Idaho, to consult Postmaster General Hitchcock regarding appointees and urging the Alaska coal cases be taken up and disposed of. (S. Doc. 248, p. 74.)

QUESTIONS CONSIDERED.

There has been no question of criminal guilt involved. Bribery or corruption of the gross sort has not been charged.

Between vulgar graft and criminal guilt on one side and perfection on the other is a broad field. Within it lies the standard of official conduct the people have a right to exact.

They do not require that an official shall be infallible. They do not expect him to commit no error of head or heart. On the other hand, they are not satisfied to have him simply keep on the windy side of the law and pursue a course which is neglectful of and unfaithful to their interests to the point just inside the line of criminal guilt. They demand that he shall be honest; that he shall serve to the best of his ability and in the utmost good faith. The honesty they have a right to demand is of that broad nature which means something more than keeping out of jail.

The fidelity they have a right to insist on is of that positive, aggressive, vigilant kind, which means something more than complacently moving along lines of least resistance.

The public desire and have a right to require that the official, holding its power of attorney, shall stand steadfastly for the welfare of the people, yield to no pressure, whether of particular friends or powerful political or financial influences, that would jeopardize or endanger the rights or interests of the whole people.

The public expect and have a right to demand that the official shall fully realize the large responsibilities of his position, be ever mindful of the trust reposed in him, and faithful and diligent in the performance of his duties. Honesty, courage, and ability, in the order named, are the qualities demanded in high official position.

The principal question then is, Has the Interior Department been officered and conducted according to these standards; have these officials observed true fidelity to the public interests or have they been characterized by a lack of it?

The signers of the report under consideration—four members of the committee—and the signer of another report—one member—have made certain findings from the evidence which, in my view, are correct and ought to be approved by Congress.

Referring particularly to the first report mentioned, let us see if these findings are not the fair, reasonable, and logical conclusions to be derived from the evidence submitted. If so, the resolution before the Senate should be adopted.

THE FINDINGS.

First. That the evidence does not show Mr. Ballinger drew up an escrow agreement in the Watson Allen matter.

There seems to have been a verbal agreement with reference to some land contracts or deeds, according to Mr. Todd, but Judge Ballinger had nothing to do with the agreement. (Record, pp. 2458–2459.) The contracts or deeds and notes were left in escrow with an attorney and placed in Judge Ballinger's safe. (Record, p. 2461.)

This is not of sufficient importance to dwell upon. It is not a matter about which any controversy need arise. So far as that supposed occurrence is concerned, Mr. Ballinger is not shown blamable.

Second. That the evidence does not show any conspiracy against Mr. Ballinger, and that the alleged conspiracy had no existence in fact.

The theory seems to have been that Mr. Garfield was disappointed at not being selected as Secretary of the Interior and in February and March, 1909, made large withdrawals of public lands for the purpose of embarrassing his successor; that Mr. Pinchot, by reason of the restorations which began soon after Mr. Ballinger became Secretary of the Interior, and because of the Secretary's refusal to withdraw administrative sites, and on account of his attacks on the Reclamation Service, was angered, and conspired with Mr. Garfield to drive Mr. Ballinger from office; that Director Newell joined this conspiracy when he found the policy of the Reclamation Service revised; that Messrs. Price and Shaw, desiring to help the others, became parties to the conspiracy; that a meeting was held at Mentor in July when plans were arranged to carry out the object; that at Spokane, at the meeting of the Irrigation Congress, Gov. Pardee was added and, in pursuance of the plans, made a speech attacking the administration of the Interior Department; that Mr. Glavis, because he had been superseded by Sheridan, was vindictive, and appeared there with the result that the Glavis report was submitted to the President.

In the first place Mr. Garfield began making his withdrawals in December, 1908, before he could have known he was not to be his own successor. The withdrawals, continued in January, February, and March, were of precisely similar character. There is nothing to show that Mr. Garfield had any occasion to feel aggrieved or disappointed that he was not chosen to succeed himself, least of all toward Mr. Ballinger, who, apparently, had not personally sought the appointment and certainly had not made any fight on Mr. Garfield. No conduct of the latter can be properly ascribed to disappointed ambition.

Mr. Pinchot naturally felt keenly the attitude of the new Secretary of the Interior toward the Reclamation Service, the Forest Service, and the power sites. The latter he took up with the President direct. The rewithdrawals began shortly and the restoration stopped promptly. The question of administrative sites was referred to the Attorney General, and

is still there. Mr. Pinchot desired to save Mr. Newell from dismissal, and the meeting at Mentor, in July, 1909, was arranged for the purpose of considering the situation and making an earnest effort to prevent the disorganization of the Reclamation Service. Perkins, Mr. Ballinger's witness and friend, joined in that meeting of the conspirators and approved of all that was said and done there. (Record, p. 4652 et seq.)

It will be remembered that Perkins is the Chicago agent in the Reclamation Service whom Director Newell and Engineer Davis recommended should be called on to resign. He was no friend, when he testified, to the alleged conspirators, and he was under obligations to Secretary Ballinger for retaining him and increasing his powers. He swore (record, p. 4652) that their was nothing improper on the part of anyone in what was done at Mentor, and that he did not consider there was any conspiracy or combination; that he regarded the action there taken as "absolutely proper."

Mr. Pinchot attended the Irrigation Congress in furtherance of its work. Gov. Pardee's speech, in which he charged that private interests had seized some restored power sites, was his own creation, based on what he supposed was trustworthy information, and he alone was responsible for his address. It was not made as part of a plan or joint arrangement to injure Mr. Ballinger. Mr. Glavis went to Spokane to see Mr. Pinchot alone in pursuance of the highest purposes and with no animosity. Gov. Pardee was called in to hear this statement purely incidentally and by way of strengthening the counsel of which Glavis felt in need. The advice to him to make his report to the President grew out of no conspiracy founded then or theretofore.

It was based on a high conception of duty to the country without regard to individuals, high or low.

In the same spirit and with the same patriotic motives, actuated by the desire to serve the public interest, that advice was followed.

No elements of a conspiracy or combination against Mr. Ballinger can be found in the conduct of these men as suggested, and the theory falls to pieces whenever and wherever it comes in contact with stubborn facts.

The Department of the Interior dealt another blow at the Forest Service when it terminated the Indian cooperative contract, which had been operating successfully since January, 1908. This occurred between the Mentor meeting and the Spokane congress. Newspapers were publishing articles about the "Ballinger-Pinchot war." These things did not add security and cheerfulness to the general situation, but there was no concerted action attempted to crush Mr. Ballinger. There was no effort made to publicly contrast his policies with those of Mr. Garfield at the congress.

That Mr. Pinchot and Mr. Garfield warmly disagreed with the Secretary is plain. That they had begun to look upon his course as subversive of what had been so well undertaken in the past, as they considered, is certain. That they and others were beginning to regard him as an enemy to the cause and the policies dear to their hearts, because making for the public good, may be safely asserted. In fact, they had about reached the conclusion that he was unfit for office. Mr. Pinchot said as much to Mr. Smith. But this is not the same thing as a conspiracy or unlawful combination. They differed with the Secretary radically in his views on public affairs within his jurisdicton. They had that right and the right to let him and others know it.

There is not sufficient evidence to support the claim that a combination has ever been formed having for its object the removal of Mr. Ballinger.

Third. That Mr. Gifford Pinchot and Mr. L. R. Glavis were faithful and efficient agents of the Government and the people. That their protests and actions restrained the officers of the Interior Department and prevented a great public wrong and their conduct was wholly in the interest of the people.

Mr. Pinchot's work speaks his commendation. His life, his character, his public service, are as open and conspicuous as if blazoned on the sky. They are not without appreciation by the country, it is hoped and believed. If citation from this record is called for to sustain the above finding, the report sufficiently gives them, and I shall only refer to them.

President Taft wrote him September 17, 1909:

> I wish you to know that I have the utmost confidence in your conscientious desire to serve the Government and the public, in the intensity of your purpose to achieve success in the matter of conservation of national resources, and on the immense value of what you have done and what you propose to do with reference to forestry and kindred methods of conservation.

September 13, 1909, the President wrote Secretary Ballinger (record, p. 3751), referring to Mr. Pinchot:

> I value him highly as a public servant and believe him capable of further great usefulness.

We get a notion of his ideals by reading his letter to Senator Dolliver (Comp., p. 645). Through his efforts conservation has impressed the thoughtful citizen, attracted the attention of the general public, received careful study, and finally won its way to the favor of the American people. His aim has been to promote the prosperity of the country and endeavor to enhance the welfare of all the people. Unselfishly and incessantly he has striven in the public interest. With a high sense of public duty he advised Mr. Glavis to go to the President with his story of the Alaska coal cases. He believed that the derelictions pointed out then were real and not imaginary. He has grown rather than weakened in that faith. After that day he came to know more of the devious ways of some people in official station, and he has not hesitated to denounce that kind of loyalty which deceives and that service which endangers the public property. He interceded with the President to stop the restorations, which began in March and ended April 10 (record, p. 1699). Rewithdrawals began May 11 (record, p. 3442). He endeavored to prevent the demoralization of the Reclamation Service and to protect the Forestry Service against assaults on it. He has been true to every trust and opposed to special privileges and private emoluments at the expense of the people at large.

Regarding Mr. L. R. Glavis and his course, no one can fail of admiration for him. A young man, 26 years of age, he writes and speaks as one trained and equipped by a lifetime of study and experience. This record is full of his work. His correspondence with various officials, from the President down, is of the most serious, dignified, and forceful character. There is no ambiguity, no concealing, no doubt about his meaning. His communications are always respectful, considerate of others, and to the point. His marvelous memory and clear expression are shown by his testimony. His perfect truthfulness and honesty speak out unmistakably. Prompted simply by the highest sense of duty, he went about his work and pursued it conscientiously and industriously to the end. Gifted with keen perception, he saw the right and shaped his course by that star. You will find no petty jealousy or malice cropping out in what he said and did. He felt under obligation to see the laws executed as he found them. The Government was "of the people and for the people" as he saw it, and he felt constrained to stand by the rights of the Government as an agent of the people. He possessed a high sense of public duty, and he was true to himself, and therefore not "false to any man."

Mr. Dennett, Commissioner of the General Land Office, wrote him June 3, 1908:

> The General Land Office and the department appreciate the very thorough and efficient manner in which you conducted your investigations in reference to the real situation in the Alaska coal matters. It was largely by your report of facts that this office was enabled to prove by the record what are the necessities of the Alaska coal fields and what were the various efforts to unlawfully acquire title to such lands. (Comp., p. 302.)

Chief of Field Division Schwartz wrote to Mr. McEwing July 1, 1909:

> Mr. Glavis is an especially competent man, and the proposition of assigning assistant counsel to him in these cases is at his own request. (List, p. 227.)

To Mr. Sheridan, on July 21, 1909, Mr. Schwartz wrote (List, p. 254):

> The office appreciates that it has no more painstaking and careful agent than Mr. Glavis, and that he is giving to these entries and has given to them his best efforts.

Commissioner Dennett wrote to Mr. Glavis, November 24, 1908:

> This office joins with the Secretary in complimenting you for your quick work in these cases, and especially the quick work you made in the Pacific Furniture Co. case, having had the case turned over to you in April last. (Comp., p. 322.)

Again, on November 30, 1908, Commissioner Dennett wrote him:

> MY DEAR GLAVIS: Please accept my congratulations on the successful termination of the Portland Coal & Coke Co. cases. The Secretary expressed his pleasure at the termination of these cases, as well as at the Smith verdict. (Comp., p. 323.)

Hon. Henry M. Hoyt, of Seattle, Wash., wrote to Hon. Henry M. Hoyt, Solicitor General, Washington:

> This is to introduce to your very favorable attention my friend and coworker, Louis R. Glavis, about whom I have often written to you. You can absolutely rely upon any statements he makes of either a public or private nature. (Comp., p. 180.)

Other similar references could be made.

From a close observation of Mr. Glavis on the witness stand for days I fully believe all these are deserved, and I am furthermore prepared to indorse the words of Mr. Pinchot, used in his letter to Senator Dolliver (Comp., p. 645), that "Mr. Glavis is the most vigorous defender of the people's interests." Here was a young man who took his position in his hands and did what he conceived to be his full duty, in a great emergency, when large public interests were at stake, when a

less courageous, conscientious, and patriotic man would have allowed matters to take their own course.

Something of the capacity and refinement of the man will be gathered from the letter he wrote the President September 20, 1909. (Comp., p. 511; record, p. 888.) Not only because it gives us a vision of Glavis, but because of its literary excellence, I am tempted to read it. I believe you will agree that it is a classic and marks the author as uncommonly gifted. Listen:

SIR: I have laid before you all the essential facts in my possession regarding the official conduct of certain cases by the Department of the Interior concerning coal lands in Alaska. As Chief of the Field Division directly concerned, and because of the tremendous values involved, I felt my personal responsibility most keenly.

The evidence indicated that a great syndicate is trying to secure a monopoly of this coal in direct violation of the law. Ultimately I felt myself obliged to appeal to you over the heads of my superior officers in order to bring about the enforcement of the law, which, in a measure, would concede these coal lands to the people at large. I deemed it my duty to submit the facts to you, and I can not regret my action. Since there may be now even greater danger that the title to these coal lands will be fraudulently secured by the syndicate, it is no less my duty to my country to make public these facts in my possession, concerning which I firmly believe that you have been misled. This I shall do in the near future, with a full sense of the seriousness of my action and with a deep and abiding respect for your great office.

Respectfully,

L. R. GLAVIS.

But Glavis was a more or less obscure young man, with no influence of consequence, no means or resources with which to make any trouble, and the simple and easy way to be relieved of his persistent bother about the Alaska coal claims, which he seems to have had on the brain, would be to dismiss him and send him adrift in disgrace. He violated a sacred rule of discipline by going over the heads of his immediate superiors.

His offense was so terrible that nothing but his separation from the service would atone. Furthermore, that would mean the last of Glavis. To indignantly deny any wrongdoing or wrong planning would be easy. To asseverate in thunder tones one's high and single-minded purpose, one's purity of motives, one's devotion to his country and to his duty was not difficult. To charge Glavis with being oversuspicious and attribute afflictions to him like "megalomania" would effectually dispose of him and his statements forever.

These gentlemen overlooked the old truism that "Truth crushed to earth will rise again; the eternal years of God are hers." It followed in due course that Glavis was denounced, dismissed, and disgraced as far as it lay in the power of the mighty to do—scourged and sent forth in such sort that no one would hear of him again. Demolished, his story crushed, the man discredited, any statement he might make as originating in a diseased brain, he would disappear, taking his story with him into obscurity, and the Department of the Interior would pursue the even tenor of its way as if nothing had happened. If the record had been studied closer, it might have occurred to some gentlemen while pronouncing against Glavis that the man who could condense a statement within 20 pages with such clearness and force as exhibited in his report of August 11, 1909, to the President, which called for replies covering nearly 800 pages, would not likely pass out of sight and hearing in a free country with a free press. The idea that Glavis would be destroyed and silenced might well have vanished upon reading that splendid production, his letter to the President of September 20, 1909.

In the interest of truth, for the benefit of the people, that all men might know what was going on respecting the property of the people of great value, without reward to himself or the hope thereof—for he received not a cent for the article which was published—he did give the facts to the public.

There have been strong, patriotic men convinced of the truthfulness and accuracy of the statements made to the President and to the public. They have not been willing that the whole matter should be disposed of by the dismissal of Glavis. This investigation has established the truth of every material statement he made in his letter or report to the President. It has shown, to our minds, conclusively, that his apprehensions and impressions of official delinquencies were soundly warranted by the facts. There is not a substantial thing in the entire record which points to neglect, incompetence, or wrongful conduct on the part of Mr. Glavis in the performance of his work. On the contrary, the record is crowded with the overwhelming evidence of his sincerity, ability, industry, integrity, and devotion to duty.

Were the officers of the Interior Department restrained in the matter of disposing of public property? Certainly. The evidence clearly establishes that. Glavis, by his report of November 12, 1907, to the commissioner (Comp., p. 175), and by his personal letter to Schwartz, of November 22, 1907 (Comp., p. 177), undoubtedly caused investigation of Alaska coal claims to be resumed after Jones had been taken off and put on other work. This last letter resulted in Glavis being called to Washington, where he urged investigation and placed the situation before the department with earnestness. The commissioner directed him to take up and prosecute thoroughly the investigations, giving him written instructions later, under date of December 28, 1907. (Comp., p. 206.)

Again, Glavis's protest by telegram and letter of January 22, 1907 (Comp., pp. 213 and 214), caused a suspension of the order clear listing the Cunningham claims made December 26, 1907, entered January 4, 1908 (Comp., p. 208), and notified by letter to Glavis January 7, 1908 (Comp., p. 209), which he received January 20, 1908. There can be no question but what this vigorous action of Glavis saved the lands from going to patent at that time (record, p. 3967). The patents had been agreed on as to form and were about ready for signature when Glavis's telegram was received. Guggenheim had accepted the option of July 20 December 7, 1907. The clear-listing order was suspended and ex-Gov. Miles C. Moore, who was in Washington December 20 when the clear listing was agreed upon, was advised in response to his inquiry by Commissioner Ballinger himself February 28, 1908, "Temporary delay caused by report of field agent." (Comp., p. 226.)

Again, beyond doubt, the moving cause to securing the opinion of the Attorney General, dated June 12, 1909, reversing the Pierce opinion construing the act of May 28, 1908, under which latter opinion practically all the claims to Alaska coal lands would have gone to patent, was Glavis's activity. May 17, 1909, Glavis arrived in Washington, and urged that the highest authority be requested to give an opinion as to the proper construction to be placed on that act. Secretary Ballinger was persuaded to submit the matter to the Attorney General. He directed Glavis and Schwartz to prepare the letter of submission. They did so. The letter was initialed by Commissioner Dennett for the Secretary's signature, and was directed to the Attorney General. Instead of going to him it went to Assistant Secretary Pierce, and his opinion was rendered May 19, 1909. It would have given the Cunningham claimants their patents (record, p. 366), and perhaps 100,000 acres would have passed from the Government under it.

Miles C. Moore appeared in Washington December 21 and remained over the 22d. On the 24th Glavis is ordered to make report on these claims. He prepared it, but hesitated to file it. He was distressed that the Attorney General had not been called on for his opinion, and got his friend Hoyt to see the Attorney General and place the matter before him. That official requested Glavis to call, and the result was the Attorney General was requested on December 26 to render his opinion, which reversed the Pierce opinion, and Glavis's report was withdrawn, and he proceeded with the further investigation.

June 29, 1909, Glavis was advised the Cunningham claimants would stand on the law of 1904. He was notified to prepare for hearings forthwith. (Comp., p. 381.) Glavis requested and gave reasons for more time in a telegram to the commissioner. (Comp., p. 381.) July 1 he was notified a man would be sent "to take charge of the investigations." (Comp., p. 382.) Glavis appealed to Secretary Ballinger for time to send Kennedy to Alaska for field examination. He refused to order the delay, and referred to Schwartz. Sheridan arrived to take charge, and agreed with Glavis the extension should be made until Kennedy returned. The Forest Service intervened.

For the fourth time Glavis had saved the situation. He had obtained in 1908 the most valuable piece of evidence for the Government, the Cunningham Journal. He had procured the field examination and Kennedy's evidence, showing a common tunnel for joint operation had been constructed on the claims, which was the next most valuable point in the Government's favor. In the face of obstacles, with no encouragement, but against what seemed a determined purpose to patent the claims, right or wrong, Glavis persevered, step by step, and if the lands are saved to the people because the law has been violated in their attempted acquisition, Glavis is the one man to thank for it.

The hearings are ordered before the commissioner, contrary to an unbroken precedent that they should be had before the land officers at Juneau. Appeal lies from the commissioner to the Secretary of the Interior. He is disqualified. Mr. Sheridan, a young man, one year out of college, never having tried a lawsuit in his life, is given control and direction of the Government's case. Property estimated to be worth $25,000,000 is at stake. The estimates are that in the Cunningham group of 33 claims, 5,280 acres, there are from 65,000,000 to 90,000,000 tons of coal above the tunnel levels. (See drawings, record, pp. 1675, 1676, 1677.) The Cunningham cases will furnish a precedent for hundreds of others. There are 250 claimants at least, residents of the State of Washington. One hundred and sixty-four of these are residents of the Secretary's and commissioner's

home city, Seattle. Three hundred and sixty-one are residents of the Pacific coast States and Alaska.

Under these circumstances, in view of what Glavis had gone through, do you consider him oversuspicious, afflicted with megalomania, when he went to the President with the whole matter, especially when he was advised to do so by a most upright, just, and farsighted, patriotic official, and especially, too, when his superior, the Secretary, had refused to give any directions or exercise any authority in the premises? Yet the burden of Glavis's offending is the fact of his report to the President, not the incorrectness of that report. The report itself is absolutely true and correct in every detail. The wicked thing was to make it at all. Instead of being condemned he should be commended in the most liberal terms language can be found to express for his courage, unselfish, faithful performance of duty, a heroic meeting of the responsibilities growing out of his official connection. All honor to this young man, whose whole course has been an everlasting credit to his country. It is a comfort to know that there are young men in America ready to serve and to sacrifice heroically.

The people may feel reassured that their interests will be safeguarded, the Republic is secure, so long as the Glavis ideals obtain. Young men in official life may well be proud of him and follow the example he has set before them. To criticize his conduct is to take that other and different view that one should "bend the pregnant hinges of the knee that thrift may follow fawning." For those who are sworn to support and execute, to acquiesce in violations of the law because it is conceived the law is absurd and nonsensical, leads to anarchy. To allow powerful influences to have their way, for private gain at public loss, and make a farce of resistance, a sort of saying he "would ne'er consent, consented," means coming to the Rob Roy plan of "Let him take who has the power; let him keep who can."

Against each and all these positions Glavis took his stand and though relegated to private life he has lived to see his course approved by the people of this country and the "conservation of manhood," "the conservation of democracy," assured.

Fourth. That in his statement of September 13, 1909, to the President, and in other correspondence and communications with the President, Mr. Ballinger has been frequently uncandid; that he has, on a number of occasions, been guilty of duplicity, and that his conduct in the premises was intended to and did have the effect of deceiving the President.

Some instances are shown by the testimony of Mr. Arthur P. Davis, chief engineer of the Reclamation Service. He testified that Secretary Ballinger telephoned him on the 17th of March, 1909, asking him to meet the Secretary at 7.30 o'clock that evening, which he did. (Record, p. 1696.)

The Secretary opened the conversation by saying he wanted to ask some questions about the Reclamation Service. "He made a number of criticisms on the past conduct of the service." (Record, p. 696.) "The Secretary, as I remember it, had no commendation whatever to make of the Reclamation Service, but he criticized it on many points," says Mr. Davis. "One was the withdrawal for power sites; one was the fact that many settlers were on lands who, he thought, had been promised water and had been waiting and living on promises for some time and had been misled; one was that part of our work which was going on under what we called "force accounts"—that is, the direct employment of labor—which he said was illegal and could not be done, and it should be done by contract; another was what we call our "publicity bureau"—that is, the dissemination of information concerning the projects, mainly to locating settlers; also "the alleged oppression of contractors." "He said he had a great deal of complaint about the treatment of contractors by the Reclamation Service." "He criticized our having taken up too much work." (Record, p. 1696.) He admitted "he knew very little about the service." (Record, p. 1697.) "The Secretary expressed a lack of confidence in Mr. Newell's ability." He said the power-site withdrawals were all illegal. (Record, p. 1697.) He spoke as if "a great crime had been committed in making the withdrawals." Davis said they could be restored if it was illegal to withdraw them. The Secretary desired him to segregate in his records the withdrawals that had been made for the conservation of power, and to do it slowly, so as not to attract public attention. (Record, p. 1698.)

Notwithstanding this attitude of the Secretary toward the Reclamation Service, which Mr. Davis again refers to at page 1729, when he says, "I came back from Porto Rico (Mar. 16) and found Secretary Ballinger very deeply prejudiced against the Reclamation Service," yet in his public utterances he commended the service (record, p. 1799) and "the manner in which they conducted their business." Asked, "When you say the Secretary made no criticism in his public addresses, do you mean he did make criticisms in private?" He answered, "Yes, sir." "Some criticisms which you heard yourself?" "Yes; he criticized it frequently." "In private to you?" "Yes, sir."

So that the Secretary was pretending to be favorable to the Reclamation Service and approved its operations openly, but privately he was criticizing it, reversing its plans, disarranging its affairs, and attacking the director. He told the President the restorations were determined upon and made upon the recommendation of the Reclamation Service. The fact is, as Mr. Davis states (record, p. 1699), "He reiterated his statement that it [the withdrawal] was illegal and it was immaterial what could or might be done, or what had been the plan regarding paring down, because it was all in violation of law, and must be restored, and directed that we proceed with that." Mr. Newell and Mr. Davis were having a conference with the Secretary. "Did he repeat the order to recommend those restorations?" "Oh, yes." "To be exactly correct, I can not say that he used the word 'recommend,' but he instructed us to prepare these withdrawals for restoration." (Record, p. 1699; see also pp. 1736–1738.) So that in no sense can it be truthfully said the restorations were recommended by the Reclamation Service. "Mr. Newell defended the withdrawals, stated the purpose of the plan regarding the paring-down process," and so forth. (Record, p. 1699.) Mr. Newell corroborates Mr. Davis. He says, "I never recommended any restorations." (Record, p. 1964.) The President was misled by the representations inexcusably made to him by the Secretary in respect to these restorations. (Record, p. 1189.)

The Secretary in his letter to the President, dated September 4, 1909, stated:

> The Cunningham group of entries were not involved in the construction of this statute, Gov. Moore and others having repeatedly refused to put their claims under that law. (S. Doc. 248, p. 66.)

In his letter to the President of November 15 he repeated that statement. (Record, p. 1528.) As a matter of fact, the Cunningham claimants did not elect to stand on the law of 1904 until June 29, 1909. (Record, p. 244.) Pierce's opinion was rendered May 19, and the matter was presented to the Attorney General May 26, 1909. On May 22, 1909, Commissioner Dennett (record, p. 238), and on May 24, 1909, Secretary Ballinger himself, advised Miles C. Moore that the Cunningham claimants might proceed under the act of May 28, 1908. Now, why did he not tell the President these facts?

The Secretary further said in his letter to the President:

> It had been all along the determination of myself and other officers of the department to secure the opinion of the Attorney General construing the act of May 28, 1908.

Asked when that purpose was formed, he replied, on the stand, it was at the time of the conference with Glavis, Schwartz, and Dennett, May 16 or 17, 1909. (Record, pp. 4116–4117.) This was undoubtedly the occasion when Glavis came on for the purpose of urging the matter be submitted to the Attorney General and was the result of his insistence. Even then, as we have seen, it was sidetracked to Assistant Pierce, and it required seven days of the hardest kind of work and greatest diplomacy on the part of Glavis to bring the question before the Attorney General. In the face of what Glavis and Hoyt testify, not denied by the Attorney General, the Secretary makes the astonishing further statement to the President that "Glavis is entirely in error in assuming that his conversation with the Attorney General had any effect upon the matter being submitted to the Attorney General." (S. Doc. 248, p. 67.) Further in the letter of September 4, 1909, the Secretary states: "Mr. E. C. Finney, Assistant to the Secretary, had prepared a formal statement of facts and request for such opinion." (S. Doc. 248, p. 71.) The truth was that the statement of facts and request was prepared by Schwartz and Glavis, as directed by the Secretary himself (record, p. 4268), and was then improperly submitted to Assistant Secretary Pierce instead of to the Attorney General. To the President, in the same letter of September 4, 1909, Secretary Ballinger states: "Special Agent Love's favorable report was at the time brought to my attention, and basing my action thereon this group of claims was clear listed for patenting." (S. Doc. 248, p. 67.) The group referred to was the Cunningham group and the time mentioned was during the call of Miles C. Moore. It is scarcely accurate to denominate the Love report as "favorable." Referring to the Cunningham cases, he further said:

> In answer to this statement of Glavis's, I beg to say: (1) That as Commissioner of the General Land Office I had no knowledge of the specific facts or any facts contained in the records and files of the General Land Office further than what was contained in Special Agent Love's report. The files were not laid before me nor examined by me at any time nor were their contents made known to me. (2) At the time in question I was advised by Mr. Schwartz that the files of the General Land Office showed only the entries and Agent Love's report, together with a general report on Alaska coal entries by Agent Jones.

This letter was written some two years after the occurrence and the Secretary must have forgotten what he personally knew regarding the Cunningham group in December, 1907. This is the only explanation that appears plausible for this statement to the President. In July, 1907, he saw Jones on his return from Alaska in Seattle and consulted there frequently with him and Love in connection with the investigations they were making into these coal claims. He must have known the facts, because Jones delivered his written report of August 10, 1907, to Mr. Ballinger in person, and that report concludes with the recommendation that "a strict investigation be further made of each and every locator's connection with other locators in the groups above mentioned," among which groups was the Cunningham group. Jones made a supplemental report August 13, 1907, which was filed.

September 1, 1907, Assistant Commissioner Dennett had made an order, which the records showed, directing the chief of Division N not to approve for patent any Alaska coal-land entry which had not previously been clear listed by Division P, the investigating division. November 5, 1907, Glavis wrote urging that investigation be resumed and continued. In December, 1907, Glavis went to Washington and saw Commissioner Ballinger and advised him that practically all the claims were fraudulent and should be investigated before patents were issued and that the Love report was not reliable.

Mr. Ballinger concurred in this view and gave Glavis charge of the investigation. Yet after all this and in spite of all these things, on December 26, 1907, in presence of Gov. Moore, Commissioner Ballinger directed the clear listing of the Cunningham claims.

Why did he not say to the President what the record showed at that time and state that the documents mentioned were on file? Why profess entire ignorance of the entire situation notwithstanding his numerous conferences with Jones and Love that summer, the Jones report of which he had personal, direct knowledge? Why claim that the only thing he knew about, and indicate that the only thing on file and the record showed, was Love's favorable report? Was not the President entitled to know the precise status, all the records, reports, investigations, and the kind of verbal communications of which the Land Office was in possession when this clear-listing act was performed? It can scarcely be claimed as an oversight.

Chief of Field Division Schwartz says in his letter to the President (S. Doc. 248, p. 222):

> I know by reputation quite a number of the Cunningham coal claimants—this from the fact that they are leading business men in Spokane, Wash., and Wallace, Idaho, interested in mines and sawmills.

He said further (S. Doc. 248, p. 222) that he recalled Glavis was in Washington a few days before the clear-listing order was made, and that at that time "we all knew" that—

> numerous locations—about 700 or 800—had been made, a majority of which were believed to have been made by dummies, and that the Guggenheims were thought to be reaching out to secure control of mining interests and railroad traffic in the vicinity of Katalla.

Mr. Ballinger involves Schwartz in this clear-listing process. He says "we all knew;" that is, Commissioner Ballinger and the other officials, including himself, knew precisely what was going on. It subsequently developed that just a few days before Gov. Moore arrived and obtained this clear-listing order Guggenheim had exercised and accepted the option under the Cunningham agreement of July 20, 1907.

Clearly there was other material, important, controlling information in possession of all the officers, from Commissioner Ballinger down, than simply the Love report, and this information called for, demanded just the opposite action by the commissioner. The evidence leaves no escape from that conclusion. This Love report showed, at the top of the list given, the names of some of Mr. Ballinger's personal friends; for instance, C. J. Smith, H. C. Henry, Charles Sweeney, F. C. Moon, and others.

Mr. Ballinger said to the President that Glavis's statement that he had instructed Jones in the summer of 1907 to make only a preliminary investigation was untrue. (S. Doc. 248, p. 75.)

The facts are that after Jones's reports of August 10 and 13, the Land Office assigned him to other work, and his original instructions of June 21 were thereby abrogated. The evidence sustains the assertion that Jones was told verbally by the commissioner to make only a preliminary investigation; to interview only one or two individuals in each group so as to furnish him information which would enable him to go before Congress for additional legislation.

Glavis wrote, November 12, 1907, about his interview with the son of Clark Davis, a claimant, in which he stated Mr. Ballinger had advised him not to make any statement regarding his coal claims until charges had been made. Mr. Ballinger could not say whether answer was made to that letter (S. Doc. 248, p. 6), but it developed that he answered the letter December 12, 1907, but made no reference to the statement of Davis. (Record, pp. 809, 810.)

Again, the overwhelming weight of the evidence shows the facts directly opposed to Mr. Ballinger's assertions to the President, in the letter of September 4, as follows:

> The record in this matter, as shown in Mr. Schwartz's answer, does not bear out the assumption of Glavis: (1) That action was contrary to the recommendations of Jones and Glavis—

The action mentioned was contrary to the recommendations of Jones and Glavis, as clearly appears by Jones's reports of August 10, 1907, August 13, 1907, November 1, 1907, and Glavis's letter to Mr. Ballinger, dated November 5, 1907—

> (2) That issuance of patents was prevented by Agent Glavis protesting by wire and his report of January 22, 1908.

Mr. Ballinger testified that when he received Glavis's telegram he took it to Secretary Garfield, and after conferring with him he directed the clear-listing order suspended, the claims held up, and there they have continued.

It is absurd to claim that Glavis's telegram was a reply to some inquiry. The testimony showed, too, most unusual haste in preparing the patents for execution. The emphatic telegram from Glavis that the claims "should not be clear listed," and his letter of January 22, 1908, stopped the issuance of these patents, and no amount of quibbling or misrepresentation can make it otherwise.

Mr. Ballinger was uncandid in his letter to the President denying Glavis's statement that after his resignation as commissioner he acted as the legal representative for the Cunningham group and for a large number of others interested in the coal fields. (S. Doc. 248, p. 77.) He admitted on the stand that he acted as the legal representative of the Cunningham group. (Record, p. 4091.) He conferred with Cunningham and associates at least seven times during the summer and fall of 1908. (S. Doc. 248, pp. 68, 69, 70; 3603.) Again, with C. J. Smith (record, p. 1600) he performed services for the Green group. (Record, pp. 119–122.) He admits drawing the Cunningham affidavit of September 4, 1908, and took it to Secretary Garfield at his home in Mentor, Ohio, and received a fee for that service.

Again, he told the President (S. Doc. 248, p. 77) that—

> Mr. Glavis called on the Attorney General through an appointment made by my secretary, ostensibly to discuss the Oregon land-fraud cases.

We have already seen that Mr. Glavis called on the Attorney General at his request, brought about through an interview with Mr. Hoyt, who had seen the Attorney General at the instigation of Mr. Glavis. There is no testimony to sustain the statement of Mr. Ballinger.

He further stated to the President:

> The Forest Service, as a matter of fact, has no jurisdiction over coal locations or entries in question—

overlooking the fact that an Executive order had been passed requiring the Secretary of the Interior to consult the Secretary of Agriculture before allowing claims for land within forest reserves. (Record, pp. 1214–1215.)

Regarding Glavis's statement that the stipulation in the Cunningham cases to omit the register and receiver at Juneau and proceed before the commissioner was without precedent and contrary to regulations, Mr. Ballinger told the President:

> The stipulation is not, as stated, without precedent; the practice is not uncommon.

The regulations do provide for a trial in the first instance in such cases by the register and receiver of the local land office. (Record, p. 2984.)

Both Galvis and Jones testified that they had never heard of a case in all their experience where the hearing before the register and receiver had been omitted. (Record, pp. 202, 973.)

Mr. Schwartz says (S. Doc. 248, p. 247):

> I do not recall that cases have arisen when decisions by the register and receiver have been waived.

The statutes provide for decision by the register and receiver.

The misleading and inaccurate comments on the article in the Outlook furnishing a basis for the Ronald letter, shown to the President, are sufficiently set forth in this report and further reference is unnecessary.

The truth is, it is positively wearying and thoroughly disagreeable to trace further the many discrepancies, inconsistencies, inaccuracies, and misleading statements, so numerous and so material that we can not but be impressed they were intended to and did deceive the President.

In the face of such deception, in view of such misleading information, it is not to be wondered that the President arrived at an incorrect conclusion.

Fifth. That Mr. Ballinger, while Commissioner of the General Land Office, clear listed the so-called Cunningham claims

on insufficient evidence, and under circumstances which convince us he was aware of the existence of other material evidence which he did not call for or consider, and which, if considered, should surely have prevented the clear listing of the claims, and we find that in so clear listing said claims Mr. Ballinger showed either a lamentable want of capacity and competence or such a disregard of the rights of the public as amounted to bad faith.

Allusion has been made heretofore to what the evidence discloses on this subject. Without elaborating, let us recite the facts in chronological order.

What were the Cunningham claims?

In July and August, 1904, 32 persons, acting by Clarence Cunningham as their attorney in fact and he for himself, made 33 locations of approximately 160 acres each, aggregating about 5,280 acres, of coal land in Alaska. Notices of locations were filed in the recording district of Juneau. In February and March, 1907, entries were made in that office on 30 of said locations, and on October 25, 1907, upon the other three of said locations, and the flat purchase price of $10 per acre was paid upon each entry being made (record, p. 372), and receiver's final receipts were issued when that was done. (S. Doc. 175.) These claims are involved in proceedings in which the testimony has recently been taken for submission to Commissioner Dennett. From his decision appeal lies to the Secretary of the Interior. The usual practice has been to have the primary hearing before the local officers—in these cases ordinarily it would have been before the register and receiver at Juneau. These hearings are a part of the record in this investigation. July 20, 1907, the Cunningham claimants, through a committee duly appointed, entered into an option agreement with D. Guggenheim respecting all the group. (Record, p. 2132.) It was said that the development of the copper, railroad, and other large interests in the interior depended on the opening up of this coal field. (Record, pp. 2193-2195.)

Let us go back a little and see what the situation was and how it developed toward this clear-listing order.

The work of special agents in connection with coal-land locations in Alaska began about December 11, 1905, when Commissioner Richards gave Agent H. K. Love instructions. (S. Doc. 248, p. 734.)

Regulations of July 18, 1904, were mentioned; also circular of instructions of August 31, 1905.

November 12, 1906, all lands in Alaska were withdrawn from filing and entry under coal-land laws. (S. Doc. 248, p. 736.) This order was modified January 17, 1907, so as to except existing rights theretofore acquired in good faith.

May 16, 1907, Commissioner Ballinger issued a letter of instructions interpreting the orders of withdrawal. (S. Doc. 248, p. 736.)

On August 2, 1907, Special Agent Love reported on the Cunningham entries (S. Doc. 248, p. 738), suggesting and submitting a question of law which would have a bearing on the validity of the claims. This is called Love's "favorable report."

On June 21, 1907, Acting Commissioner Fred Dennett had instructed Horace T. Jones, special agent, at Portland, to make a "thorough, complete, and energetic investigation * * * to exclusion of any other business * * *" of Alaska coal claims.

June 27, 1907, Jones telegraphed he would begin at once, and went to Juneau, Alaska. He returned to Seattle July 20, and found Commissioner Ballinger was there and desired to see him. July 22 he called on Commissioner Ballinger, and repeated this several times thereafter in connection with these investigations.

July 22, 1907, the commissioner directed Love verbally to join Jones.

August 10, 1907, Jones reported to the commissioner at Seattle in person and filed a written report, in which he "recommended that a strict investigation be further made of each and every locator's connection with other locators in the group above mentioned." He had given a list of applications and filings and mentioned the Cunningham group. The commissioner ordered Jones to limit investigation.

August 13, 1907, Jones further reported, "I feel that the disposal of the lands all tends toward one direction, and that is the Guggenheim companies," and recommended that "these entries be carefully investigated by an experienced, fearless agent." (S. Doc. 248, p. 740.) The discovery, later, of the Guggenheim agreement shows this opinion of a conscientious agent was well founded. This is quite a full report and gives names of claimants and shows the various groups, including the Cunningham applicants. (Record, p. 324.)

Jones was sent to other work, but in writing the department on November 1, he referred to the Alaska coal claims and urged the investigation should be resumed.

November 5, Glavis wrote urging early and thorough investigation of Alaska coal entries, referring to Jones's recommendation. Glavis was now Chief of Field Division and Jones was under him.

The Fimple-Cunningham correspondence of February, 1905, was on file. (List, pp. 10, 11.) This showed that a common tunnel was contemplated and carried a warning to the claimants.

September 1, 1907, Assistant Commissioner Dennett made an order to the effect that all Alaska coal applications must be clear listed before approval for patent—that is, must first be referred to Division P for investigation.

November 22, 1907, Glavis wrote to Schwartz suggesting a personal interview and discussion relative to Alaska coal claims.

December 6, 1907, Schwartz directed him to come to Washington, and he then, December 13, saw Commissioner Ballinger and told him he thought all the Alaska coal filings were fraudulent, and mentioned particularly the Cunningham group. The commissioner told him to make full investigation.

December 19, 1907, Glavis went West.

December 13 Commissioner Ballinger placed Glavis in charge of coal-land investigations in Alaska and gave full written instructions under date of December 28, 1907. (S. Doc. 248, p. 34.)

December 23, shortly after Guggenheim had accepted the option, Miles C. Moore appeared in Commissioner Ballinger's office and saw the commissioner and Schwartz. (Record, p. 4245.)

December 26 Commissioner Ballinger clear listed the claims. (S. Doc. 248, pp. 3571, 3572, 4246, 4247, 4261.)

He had told Glavis to take charge of investigations of matters relating to Alaska coal lands while Glavis was in Washington, and on December 28, 1907, wrote him confirming the verbal instructions. (Ex. 5, S. Doc.; p. 34.)

At that time Mr. Schwartz says: "We all knew that the Guggenheims were thought to be reaching out to secure control of mining interests and railroad traffic in the vicinity of Katalla." (S. Doc. 248, p. 22.)

Love himself says "that report"—of August 2, 1907—"did not clear list those entries for patent." (Record, p. 803.)

Love was superseded by Jones, and his ambition to become marshal in Alaska had been brought to the commissioner's attention prior to the order of clear listing. Love had interviewed only two of the claimants. (Record, p. 2506.)

January 7, 1908, Assistant Commissioner Dennett wrote Glavis inclosing Schwartz's clear-listing order of January 4, 1908, ordering the lands clear listed in Division P and referred to Division N for action.

January 22, 1908, on receipt of this letter, Glavis wired Commissioner Dennett:

> Coal entries mentioned in your letter January 7 should not be clear listed. Letter follows.

And on the same day wrote the commissioner. (S. Doc. 248, pp. 8 and 9.)

So that instead of the Love report of August 2, 1907, being the only information in possession of the commissioner on which to base his order to pass these entries to patent when Gov. Moore called December 23, 1907, he was then advised by conversation with Glavis December 13, 1907; the reports of Jones, August 13 (S. Doc. 248, p. 26) and August 10, 1907 (S. Doc. 248, p. 25); Jones's verbal report in July; the instructions which had been given Love and Jones, and on December 28, 1907, to Glavis; Jones's letter of November 1 and Glavis's of November 5; and other matter on file above mentioned. How could he, within 10 days of the last-mentioned instructions, without notice to Glavis, then in charge of the investigation, order the claims clear listed? The Love report would seem to warrant contrary action rather than furnish proper grounds for such an order as was made. Even if that report justified the order, what right had Commissioner Ballinger to ignore all the other data in his possession and proceed in a way wholly inconsistent with instructions to Glavis, issued only a few days before, and the previous course taken in those matters? We can not escape the conclusion that in this matter Commissioner Ballinger did not exercise due care and diligence in the discharge of his duties to the public.

His statement that on the information in hand then he would now order the clear listing of these claims plainly has reference to the Love report, and loses sight of the steps taken after that report was filed and the data in his possession of much later date than that report, all of which was more to the point, more definite, more material, and less ambiguous than that report. Without that report there could have been no sort of excuse for the action taken, and it at best could only furnish an excuse, not a reason, while other more important data was at hand which called for just the opposite action.

It is plain that when the order clear listing the entries was brought to Glavis's attention his protest was prompt and emphatic against such course and so obviously well founded that the commissioner was obliged to yield and suspend the order. The situation was, when Glavis's protest was received (S. Doc. 248, p. 8) plats and information had been telegraphed for by Commissioner Ballinger, the patents were ordered prepared, were, in fact, drafted, and some of them ready for signature (S. Doc. 462; S. Doc. 248, p. 8; testimony, pp. 824, 825), most unusual haste appearing to get the patents out and executed.

The contention that the letter of Assistant Commissioner Dennett of January 7 to Glavis called for or brought forth his reply in the form of his protest is far-fetched. The letter was notice of the action taken already, removing the claims from Division P, the investigating division with which Glavis was connected. That action meant there was nothing more for Glavis to do if it stood. The letter was no inquiry nor in the nature of such. Glavis had been instructed to investigate all Alaska claims. This letter notified him that as to the Cunningham group he need investigate no further; they had been ordered to patent. Glavis's telegram and letter caused the revocation of that order and for the time saved the lands and the rights of the Government.

It does not show a just or commendable spirit to claim otherwise.

The Secretary was disposed to lay to some one in the office the telegram of February 28, 1908, to Gov. Moore (p. 3965), but the following telegram was received February 27, 1908, from Miles C. Moore: "Kindly advise what delay issuance of coal patents. My friends think other claimants obstructing, hoping for advantage" (record, p. 3965); to which Mr. Ballinger, then land commissioner, replied, February 28, 1908, shortly before he resigned as commissioner, writing and signing the reply himself (record, pp. 3965 and 3966), "Temporary delay caused by report of field agent." This might as well have read, "We will allow the field agent to do his worst, hurry him about it, then issue the patents."

On March 3 Commissioner Ballinger appeared before a committee of Congress advocating the Cale bill. In his statement before that committee he referred to entries which could only have been the Cunningham entries. (Record, pp. 3968, 3969.)

"After Mr. Glavis sent his letter of January 22, 1908, the claims were held up by me and have so continued," says the Secretary. (Record, p. 3967.) "Temporary delay" would scarcely accurately describe the situation of the claims if it was meant to subject them to a thorough investigation with a view of canceling them, if Glavis's views regarding them were found to be correct, and to hold them up to abide that development. Nor is it stating "further investigation was necessary" to say that "temporary delay caused by field agent." "Further investigation needed" would imply that patents might not be allowed at all. "Temporary delay" would imply that patents were sure to come as promised and that within a reasonably short period of time.

The proposed contract with the Guggenheim interests is dated July 20, 1907 (p. 82 of hearings, government of Alaska, record, p. 2132), and is important as showing that one of the most powerful combinations of capital in the world had an interest in the patenting of the Cunningham claims. Its discovery verified the prophecy of Special Agent Jones and proved his efficiency. His services were of a high character. His reward, peremptory dismissal after he had tendered his unnoticed resignation! After a fine record extending over some years Jones is not allowed to resign; he must be kicked out.

A meeting of the claimants was held at Spokane and authorized Clarence Cunningham, A. B. Campbell, and Miles C. Moore to enter into such a contract or option, and they, with Daniel Guggenheim, acting on behalf of the Morgan-Guggenheim Alaska Syndicate, executed the contract whereby it was purposed that a corporation be formed with a capital stock of $5,000,000 which was to take over the lands, the claimants to have one-half the stock and Guggenheim one-half on the payment of $250,000 as working capital.

The corporation was to sell Guggenheim all the coal he would require at $2.25 per ton for 25 years, he to make a market. Guggenheim was to construct a railroad to the mines from tidewater, and the corporation was to deed such land as might be wanted for railroad purposes, and the railroad company was to be furnished its coal at $1.75 per ton. Twenty days were allowed Guggenheim in which to determine whether he would make examination of the properties, and four months thereafter in which to accept the proposal. (Record, p. 2132.)

On August 2 Guggenheim determined to examine the properties. (Record, p. 2142.) In August his expert, Storrs, sailed for Alaska, and Cunningham wrote Guggenheim, "although we understand that the Commissioner of the General Land Office has stated everything will be cleared inside of 90 days, etc." (Record, p. 2142.) December 7, 1907, Guggenheim gave due notice of his acceptance of the proposal. (Record, p. 2146.)

December 23 Miles C. Moore arrived in Washington and saw Commissioner Ballinger.

December 26, 1907, Commissioner Ballinger ordered the claims clear listed on the Love report (Comp., p. 205), although investigation as to their validity was then under way, and although the three reports of Special Agent Jones were on file, dated, respectively, August 10, August 13, and November 1, 1907, recommending further investigation and indicating the claims were not regular. There were also on file the Fimple-Cunningham correspondence and Glavis's letters of November 5 and 12, 1907, in which he urged early and thorough investigation.

December 13 Glavis had been ordered to proceed with the investigations by the commissioner himself, and, confirmatory, written instructions followed, dated December 28.

These are the facts and circumstances in connection with that clear-listing order and I submit they fully substantiate the conclusions of the committee set forth in this report. The action of the commissioner is simply inexplicable and can not be accounted for on any hypothesis that would excuse him.

The immense property at stake is shown by the sketches and estimates and analyses found on pages 1676 and 1677 of the record, volume 3, and heretofore mentioned. According to the engineers the quality of the coal is fine and the quantity from fifty to ninety million tons in the Cunningham group.

Sixth. That as Commissioner of the General Land Office Mr. Ballinger prepared the Cale bill; that he appeared before a committee of the House of Representatives in advocacy of said bill, and that he then knew and intended that said bill, if it became a law, would have the effect of validating the said Cunningham coal claims and other coal claims in Alaska, which claims were in fact fraudulent because of noncompliance with the law.

In his letter to the President, September 4, 1909, Secretary Ballinger says (S. Doc. 248, p. 69), "As Commissioner of the General Land Office I had drafted the Cale bill, which was introduced in the House through the Committee on Public Lands, which provided a method of consolidation and disposal of Alaska coal lands, * * *. The act of May 28, 1908, was, in a measure, the outgrowth of the Cale bill."

The act of May 28, 1908, applies only to existing valid locations. (S. Doc. 248, pp. 688, 699.)

By order of November, 1906, all coal lands not then located are withdrawn from entry. (S. Doc. 248, p. 735.)

The Cale bill applied to entries not made in good faith; that is, not valid under the law, and provided for their consolidation.

About March 3, 1908, Commissioner Ballinger urged the passage of the Cale bill.

This bill made it immaterial whether the Cunningham claimants had made their locations in good faith or not. If it had passed, the Cunningham claimants could have obtained patents either under section 8, or, if they were held not to have made their locations in good faith, they could have abandoned their original locations and become purchasers of an equal area for the same price under section 2. They had choice between sections 8 and 2, the only difference being they might have lost $10 per acre by having to pay that a second time. This bill was essentially advantageous to the Cunningham claimants and they were satisfied with its "main features." (Record, pp. 1241–1452, 1462.) It was drafted in conjunction with an Alaskan lobbyist. (Record, pp. 371–377, 3582.) It was intended for the relief of people who had found themselves "in a position where they could not by virtue of circumstances accommodate themselves to the law," in the language of Mr. Ballinger. (Record, p. 1248.) In other words, there were people who had violated the law in connection with coal entries and locations, but only from "circumstances" and not wickedly and with malice aforethought, who ought to be relieved and their diligence and enterprise ought to be rewarded. This was not a defensible position to take concerning the Government property and interests.

The law was in need of revision, but not along the lines of the Cale bill.

We ought to give opportunity for development of coal in Alaska, and even under the present law it is doubtful if 2,560 acres is enough land to warrant the investment of capital sufficient to develop the coal. (S. Doc. 248, pp. 195 and 202.) But it was then and is now very important that fraudulent claims shall not be patented, in order that development may follow in the public interest and not solely for private gain.

When Mr. Ballinger became Commissioner of the General Land Office, March 5, 1907, the belief was general in the department that most, if not all, the Alaska coal claims were fraudulent and ought to be thoroughly investigated. So, on June 21, 1907, H. T. Jones was selected and instructed to investigate these claims.

Throughout the record it appears that Commissioner Ballinger, Attorney Ballinger, and Secretary Ballinger were in full sympathy with the claimants and desired they should have their patents. If they had violated the law, it was because the law was absurd and the violation ought not to be regarded; but if that should meet with obstinate objection by other officials, then relief to the claimants should come from Congress in the shape of additional legislation which would have the effect of validating the claims. Nowhere does it appear that he sincerely wanted the law enforced. Nowhere is he shown to be safeguarding the public interest. All along he seemed to feel it his duty to look out for private interests and to lose sight of the fact that the property of the people was at stake. Hence he seemed determined that these claims should be patented. His course is consistent with the statement to Jones that "it would not be right to disturb the title to any of these lands, upon which large sums of money had been spent and various investors had risked their money." (Record, p. 46.)

The object of the Cale bill was to remove obstacles created by existing laws, overcome the withdrawal of November 12, 1906, and save the claims as they stood. The bill appears on page 1413 of the record.

March 31, 1908, Attorney Ballinger wrote Commissioner Dennett:

I find that the Alaska entrymen are in hearty accord with the main features of the Cale bill, and would like to see the same enacted into a law. (Comp., pp. 845–846.)

Under this bill the Cunningham-Guggenheim combination could have got immediate possession of the coal they wanted.

Seventh. After resigning as Commissioner of the General Land Office, Mr. Ballinger resumed the practice of the law in Seattle, Wash. He became interested as an attorney in cases which were pending in the General Land Office while he was commissioner, and in at least one such case he received compensation for his services. Such conduct was highly reprehensible.

In his letter to the President of September 4, 1909 (S. Doc. 248, p. 68), referring to Cunningham calling on him in Seattle during the summer of 1908, he says:

Either then or subsequently he showed me a copy of the affidavit which Glavis had taken, and also a letter written by Assistant Commissioner Fimple in regard to the right of entrymen jointly working coal entries * * *. And at a subsequent date, which I do not remember, I suggested an amendment to his former affidavit, which he made by explaining in detail what he meant by certain terms used in his former affidavit.

The "former" affidavit taken by Glavis is found at pages 88–89 of the "list," and dating March 6, 1908. The amended affidavit of Cunningham, prepared by Mr. Ballinger, bears date September 4, 1908, and appears at pages 131–135 of the "list of orders," and so forth.

By comparing them it will appear the "amendment," in view of the circumstances, was most remarkable. Both the affidavit of March 6 and the supplemental one of September 4, 1908, are so extraordinary, in view of the contract of July 20, 1907, that in the course of the hearing the statutes regarding perjury were looked up and appear at page 1676 of the record, to wit, Revised Statutes, sections 183, 5392, and 5393, with a suggestion they might apply.

Mr. Ballinger further states in his letter (S. Doc. 248, p. 68):

I had at different times during that summer conversations with Mr. Clarence Cunningham; Mr. C. J. Smith, of Seattle; Mr. John A. Finch, of Spokane; and Mr. Henry Wick, of Ohio, in regard to these entries. * * * Knowing that I anticipated a trip East, Mr. Smith and Mr. Cunningham earnestly solicited me to call upon Secretary Garfield to see if anything could be done with their claims looking to the issuance of patent. I consented to see Secretary Garfield and discuss the matter with him, as well as with Commissioner Dennett, and see what the department considered it was able to do under the law. I made, during the summer, a special trip to Mentor, Ohio, to see Mr. Garfield in respect to this matter and also spoke to Mr. Dennett about it, my principal contention being that the book that was in dispute was not proper evidence to show conspiracy against the individual entrymen who had no knowledge of the matters noted therein * * *.

The book referred to was the Cunningham journal, which appears at page 91 of the record. The entries in it were made by Clarence Cunningham. He held a power of attorney from each of the entrymen. He was to have a certain interest for his services. It purported to give the agreement by and between the claimants, including Cunningham, and to show the manner of keeping account of receipts and disbursements in the common venture. It appears at pages 61 to 87 of the list and shows for itself. How Mr. Ballinger could hold it was "not proper evidence to show conspiracy" is not easy of comprehension.

He further says:

Mr. Garfield was firm in his position, as well as Mr. Dennett, that they must bring themselves under the new law of May 28, 1908, if they expected to secure patents for this group of claims. * * *

We will see later what Mr. Garfield said, as he gives it.

The Secretary further states in his letter (S. Doc. 248, p. 69):

I received from Mr. Smith and Mr. Cunningham $200 or $250 to cover expenses in connection with my visit to the East. This is all that was ever paid to me or my firm in connection with this matter, and no fee was ever charged, unless the surplus of this money was applied for services.

It will be noted that he was going East anyhow; that he presented other matters to Secretary Garfield at the same time he presented the amended Cunningham affidavit, one of such matters being in the Indian Department. (Record, p. 1620.) If an attorney has six cases in the Supreme Court and resides in Seattle, and the six cases are set for hearing the same week, would he be justified in charging each client the full expenses of the trip to Washington and return "to cover expenses" in each case?

If he was coming to Washington at that time on other business, without regard to the hearing in the six cases, he would scarcely make each client pay the whole expense of the trip and regular fees besides. Other conferences followed about these particular claims, as given by the Secretary on page 70, Senate Document No. 248. Other services in other matters were rendered, as we shall see.

When Mr. Ballinger called on Mr. Garfield on the 17th of September, 1908 (record, p. 1619), and presented the Cunningham affidavit as amended, "stating as he was coming East, some friends of his desired him to present this affidavit to me in reference to the Cunningham claims * * * I told him that as to those claims, I considered them illegal, as the information that the department now had was a report of Glavis on the Cunningham journal, I was satisfied that the claims were illegal." (Record, p. 1620.)

Secretary Garfield read the affidavit, said he "didn't think" it "made any difference," but he would file it and send it to Washington for consideration. The indorsement on the affidavit reads: "Affidavit of Clarence Cunningham. Ballinger, Ronald, Battle & Tennant, attorneys at law, Alaska Building, Seattle, Wash." (Record, p. 1620.)

The affidavit contains the following passage (list, p. 135):

In addition to the statements set forth in that certain affidavit made by affiant, dated March 6, 1908, before L. R. Glavis, chief field division, General Land Office, affiant further states he *knows of no individual entryman in said group of entries that has any contractual obligation of any nature whatsoever with the Guggenheim syndicate, or any other syndicate or corporation whatsoever, or any of their agents, whereby his claim or entry or any part thereof is disposed of or to be disposed of, incumbered, or otherwise pledged in any sense whatsoever.* (Italics mine.)

The original affidavit of March 6, 1908, contained this passage (list, p. 88):

The Guggenheim syndicate, which has been contemplating building a railroad to our coal fields, *is not directly or indirectly interested in the said coal lands, and they have never been interested.* (Italics mine.)

The same affidavit, on page 89 of the list, contains this:

Not only have the Guggenheim interests had nothing to say regarding our coal lands, but no other corporation has had anything to do with it. We have had no written agreement whatever with any corporation, and the only understanding which we have had is that among ourselves.

Observe, now, that this man Cunningham, with A. B. Campbell and M. C. Moore, for themselves and as committee representing their associates, had made the contract with Daniel Guggenheim of July 20, 1907, which contract was offered in evidence before the Committee on Territories February 18, 1910. (Record, pp. 82, 83.) This appears to be the first time that contract came to public view. It was executed in the presence of two witnesses at Salt Lake City.

Mr. Birch was asked whether that option was ever exercised by Mr. Guggenheim. (Record, p. 84.) He replied:

It was, in this way: A telegram was sent to Clarence Cunningham on December 7, 1907, a copy of which I delivered in person to Mr. Cunningham, stating this:

"I hereby notify you that I finally accept the proposal made to me by A. B. Campbell, Clarence Cunningham, and M. C. Moore, acting for themselves and their associates, in the memorandum agreement of July 20, 1907.

"(Signed) DANIEL GUGGENHEIM."

Opinion was given by competent attorneys that the transaction was perfectly legal (record, p. 86), citing Myers *v.* Croft, 13 Wall.; United States *v.* Detroit L. Co., 200 U. S., 321; United States *v.* Clark, 200 U. S., 601.

In these hearings the following appears (record, p. 29):

Mr. STEELE. What interest, if any, has the Alaska syndicate, or has it ever had, in any corporations in Alaska?

Mr. BIRCH. The only interest which the Alaska syndicate have or had in coal lands in Alaska was through the Cunningham coal agreement, a copy of which I have here and would like to submit.

Then follows the agreement herein mentioned of July 20, 1907.

Mr. Birch is managing director of the Morgan-Guggenheim interests in Alaska. (Record, p. 73.) Mr. Steele is their attorney.

This hearing took place February 18, 1910.

These people claim they have done all they were required to do and are apparently waiting only on the patents before going to work on the property. (Record, pp. 110–111.)

Returning to the Cunningham affidavit, prepared and presented by Mr. Ballinger, it was sent to Secretary Garfield's secretary September 17, 1908, with this note:

The inclosed affidavit in the Cunningham Alaska coal cases is to be filed in Land Office, and direct Dennett to go over it carefully and bring to my attention on my return. No action to be taken till I come. (List, p. 137.)

September 23, 1908, Mr. Schwartz wrote the commissioner (list, p. 138):

I have considered carefully the attached affidavit by Clarence Cunningham. It is ingenious, but not convincing, although the showing is ex parte, and made after several weeks' very careful consideration by Cunningham and his attorneys. (Record, p. 1622.)

Commissioner Dennett wrote Mr. Ballinger September 25, 1908:

MY DEAR JUDGE: The secretary gave me Mr. Smith's letter to return to you. The matter was taken up with the secretary, and the conclusion reached that there is nothing in the Cunningham affidavit which would justify the consideration of the application under the old act to the exclusion of the new. There seems to be plenty of "ginger" these days. (Record, p. 1623.)

December 16, 1908 (list, p. 143), Mr. Schwartz wrote Mr. Woodruff, Assistant Attorney General:

We have pending about 500 coal entries. Every man on the coast who knows anything knows the Guggenheims do and will control the coal situation unless at once forestalled; the act of May 28, 1908, limits its consolidating benefits to entries already made (Guggenheim and two or three other corporations), and so shuts out further competition. Exhibits show the coal in from 20 to 80 feet with blankets of charcoal. The 500 entries have, say, 80,000 acres. At 10 cents a ton on 20-foot vein the royalty alone is $160,000,000.

Suppose in five or 10 years Guggenheim shall have acquired control of these lands, will it be charged to Secretary Garfield and Commissioner Dennett? And will Congress be able to say—as it can in the timber and stone act—that the department has taken the first paragraph of the act of May 28, 1908, and in effect changed "may consolidate" to "who have heretofore consolidated;" and where the act says that for the purpose of consolidating (bona fide claims) persons "may form * * * corporations," we have in effect said that—corporations heretofore formed, and having heretofore consolidated claims by taking unlawful assignments, may now make final proof and get a patent unless a special agent can jimmy into the inner consciousness of these entrymen and compel them to admit, in words, they were dummies from the first?

May 2, 1908, Mr. Glavis was directed by a telegram from Commissioner Dennett to suspend his investigations of the Alaska coal claims. (Comp., p. 293.)

October 7, 1908, Glavis was directed by Mr. Schwartz to resume the investigation. (Comp., p. 318.)

Of course the affidavit of Cunningham of March 6, 1908, and the amended or supplemental affidavit of September 4, 1908, are wholly inconsistent with the existence of the agreement between the Guggenheim syndicate and the Cunningham claimants of July 20, 1907. (Record, pp. 1624, 2132.)

These were the very claims Mr. Ballinger had, when commissioner, ordered clear listed and then suspended the order on protest from Glavis. He directed full investigation. He sought to cure the trouble in their way by the Cale bill. He is, when presenting the Cunningham affidavit, the attorney for the claimants and seeking to have them patented. These are the claims which on March 30, 1908, Mr. Glavis notified Commissioner Dennett he would report for cancellation. (Comp., p. 245.)

These are the claims Mr. Ballinger wrote Commissioner Dennett March 31, 1908, that C. J. Smith would visit Washington about, hoping to "jar loose." These are the claims which Secretary Ballinger notified Dennett, Schwartz, and Pierce he had been consulted about as attorney, and would have Assistant Pierce handle because of his former relations to the claimants. These are the claims Mr. Schwartz wrote S. J. Colter October, 1909, "I have always been of the opinion that the Cunningham claims were fraudulent and would be canceled." (Record, p. 3810.) These are the claims Secretary Ballinger ordered action on without delay.

They and others were involved in the Pierce opinion of May 19, 1909. (S. Doc. 248, p. 16.)

Under that opinion these claims would have gone to patent, and Glavis was ordered to report on them in conformity with that opinion. We have seen how, through Glavis's efforts, that opinion was reversed by the Attorney General June 12, 1909. How subsequently Glavis was rushed and crowded toward a hearing on them, and Secretary Ballinger was behind the crowding.

We get here a little light on the feeling of Secretary Ballinger toward Mr. Glavis. Mr. Ballinger testified that the first knowledge he had that Glavis had reported to the President was when he received the President's letter transmitting a copy. The following appears in the record, page 3806:

Mr. BRANDEIS. But you did, did you not, take up the matter of killing this snake Glavis before the President's letter reached you?

Secretary BALLINGER. I had made up my mind that he ought to be killed as a snake before then; yes, sir.

In his letter of May 22, 1909, to Secretary Ballinger, Miles C. Moore says:

Your reasons for turning this matter over to your assistant are appreciated, but we had all felt that when you were named to the position of Secretary, with your full and complete knowledge and your sense of justice, that our long-delayed patents would be forthcoming.

And again, May 24, 1909 (record, p. 239), he says, in another letter to the Secretary:

* * * Owing to the fact that you were at one time counsel for our people, you can not consistently act * * *.

This accepting engagement as counsel for the Cunningham claimants was in violation of the spirit of section 190 of the Revised Statutes and was a violation in terms of the rule 8, or regulation of the department, approved July 15, 1901, and reprinted March, 1906, set out at page 3601 of the record.

Mr. Ballinger interceded as an attorney on behalf of various persons in public-land matters with Commissioner Dennett, as shown by the correspondence on pages 1594–1618 of the record. Included among these clients was the Hanford Irrigation Co., in which he held stock (record, p. 4083); Mr. Kincaid, H. R. Harriman, Harry White (record, pp. 3597, 3598), Donald McKenzie (record, p. 4072), and the Wahpoto Irrigation Co. He represented the last-named company in an effort to get the Indian Office to persuade certain Indians to sell land to that company, and after he became Secretary of the Interior the land was sold to that company. (Record, pp. 4084–4086; Comp., 1502.)

Secretary Garfield wrote him, December 2, 1908:

It would not be proper to attempt to persuade them (the Indians) one way or the other. When the facts are presented they must decide for themselves what they wish to do. (Comp., 1502–1503.)

Upon higher ground than that of disobeying a statute or regulation the conduct of Mr. Ballinger as attorney and counsellor in matters before the Interior Department, between the time of his resignation as Commissioner of the General Land Office and his appointment as Secretary of the Interior, March 4, 1908, to March 4, 1909, was improper and must be condemned.

It was not "suitable or seemly," in the language of Secretary Lamar in the Harrison case. (Record, p. 294.)

Eighth. While Secretary Ballinger claims that because of his professional connection with some of the claimants he turned the consideration and control of all Alaska coal-claim matters over to Mr. Frank Pierce, his assistant, we find from the evidence that he did not in fact do so, but, on the contrary, improperly continued his connection therewith, and from time to time was consulted by his subordinate and gave directions with regard to said claims.

It will be recalled that on March 30, 1908, Glavis notified Commissioner Dennett that he would report the Cunningham group of claims for cancellation. (S. Doc. 248, p. 10.) He obtained the Cunningham journal, and after his investigation had proceeded about six weeks Commissioner Dennett ordered the work discontinued and directed that all agents be assigned to Oregon matters. (S. Doc. 248, p. 10.) This was done.

On October 7, 1908, Schwartz ordered Glavis to resume the investigation. (S. Doc. 248, p. 35.) He did so, and this was the situation when Secretary Ballinger entered upon the duties of his office, March 4, 1909.

He took occasion promptly to explain his relation to the Cunningham coal claimants to Messrs. Pierce, Schwartz, Dennett, Finney, and "the officers" generally.

He immediately gave directions for "speedy action" looking toward the adjustment of the coal situation in Alaska after announcing his disqualification as to the Cunningham group and turning them over to First Assistant Pierce. He determined to have action taken as to "the entire field."

After the Secretary had made known his position, as he stated it, Mr. Glavis received a letter from Commissioner Dennett, dated March 10, 1909 (S. Doc. 248, p. 11), saying:

Submit at once complete reports upon present status of investigation of all Alaska coal entries.

This was evidently written in pursuance of the Secretary's "speedy-action" policy.

Mr. Glavis replied by report of March 21, 1909. (S. Doc. 248, p. 11.) In every report he recommended that further and thorough investigation should be made.

On April 20, 1909, Mr. Schwartz telegraphed Mr. Glavis:

Alaska coal investigations must be completed within 60 days. (S. Doc. 248, p. 15.)

On the same day Mr. Glavis replied:

To complete Alaska cases in two months, Jones and four more agents necessary. Six hundred affidavits to secure. Snow will prevent field examination until July.

April 27, 1909, Glavis wrote Schwartz (S. Doc. 248, p. 36), showing there were originally some 900 claimants to be interviewed, of which some 300 had been seen, stressing the importance of a field examination which could not be attended to until July.

May 17, 1909, he arrived in Washington and saw Secretary Ballinger, Commissioner Dennett, and Chief Schwartz, and discussed the act of May 28, 1908, the construction of which the Secretary agreed to submit to the Attorney General. The letter of submission was prepared (S. Doc. 248, p. 16) by Schwartz and Glavis, and May 19, 1909, First Assistant Secretary Pierce, instead of Attorney General, handed down an opinion. It would have passed to patent all Alaska claims taking advantage of it, approximately 100,000 acres. (Record, p. 366.) This was verbally communicated to Glavis, and then, May 24, 1909, in writing. (S. Doc. 248, p. 17.) We have heretofore traced what followed. See Schwartz version, record, pages 4268 and 4269.

May 22 ex-Gov. Miles C. Moore appears in Washington again. (Record, p. 238.)

June 12, 1909, the Attorney General's opinion was rendered. (Record, p. 234.)

June 29, 1909, Glavis was advised Cunningham claimants decided to stand on law of 1904. (Record, p. 244.)

Schwartz wrote October 7, 1908, the office was informally advised to this effect, but this was indefinite and uncertain. (Record, p. 133.) June 29, 1909, Glavis inquired by wire whether it was necessary to submit report on Cunningham group. (Record, p. 245.) June 30 Schwartz replied: "Yes; submit Cunningham report." (Record, p. 245.) Several telegrams passed. (Record, p. 247.)

July 7, 1909, Schwartz wrote:

It is the present intention of the department that the Cunningham cases shall go to hearing at once, etc. (S. Doc. 248, p. 42; S. A., p. 19.)

July 8, 1909, Chief of Field Division Glavis made unfavorable report on Cunningham group and stated that Special Agents Stoner and Andrew Kennedy would proceed to Alaska July 16 to make the necessary field examinations.

July 17, 1909, Sheridan was placed in charge of the Cunningham cases by Schwartz. (S. Doc. 248, p. 20.)

July 27 Sheridan wrote favoring the Glavis recommendations that hearing be postponed until field examinations could be made. (S. Doc. 248, p. 43.) July 21 Secretary of Agriculture requested postponement until November 1. (Record, p. 342.)

July 23, Secretary Ballinger refused to give any directions and left the matter to Dennett (S. Doc. 248, p. 21) in reply to telegram from Commissioner Dennett to him advising that he telegraph Schwartz to delay issuing notices of hearing. (S. Doc. 248, p. 21.)

Kennedy's report shows Glavis was right in urging field examination before hearing, because his testimony shows the value of the coal and the nature of the land, the location of the tunnels, the fact that many of the claims had not been worked; that some contained no coal, but timber to be used in working others, all establishing the fact that the locations and work had proceeded upon the intention and idea of consolidating them all contrary to law.

July 20, 1909, Glavis, Chief of Field Division, wrote to Commissioner Dennett, giving the status and a full report as to each group of claimants (S. Doc. 248, p. 49.)

The record shows that Schwartz, Dennett, and the whole force, not only with the knowledge, but by the direction of the Secretary, given immediately after he became Secretary, were demanding reports and crowding a hearing in the Cunningham cases without giving sufficient time and opportunity to collect the evidence and prepare the cases for the Government. Glavis was ordered to report at once; then directed to be prepared for hearing in 60 days; then when he pointed out some 600 affidavits had to be taken, and a field examination ought to be made, and this could not be undertaken until July, Sheridan was appointed to take charge in Glavis's place and to proceed to a hearing. Dennett's letters show he was not in sympathy with Glavis's efforts, which he denominated as "intended to put the lands back in cold storage." His attitude was altogether favorable to the claimants. His inclination was in that direction. He deplores the intervention of the Forestry Service, and admits but for that there would not have been an extension of time granted. All those things were sufficient to impress Glavis that a critical situation was at hand, and that unless some strong arm was raised, and that without delay, the coal lands embraced in the Cunningham claims would pass forever from the Government in spite of what he was reasonably convinced were illegal acts and violations of law in their acquirement. He felt these entries should be canceled; that they were not valid, because the statutes had not been complied with. It was evident he was receiving scant sympathy and no encouragement from his superiors, whom he had kept advised as fully as possible.

The time had come when the best advice was needed. His immediate superiors had placed another over him in the work; his chief, the Secretary, had refused to have anything to do with the matter; naturally there was but one other alternative—and his friend Mr. Pinchot so advised—and that was he must go to the President, the Chief Executive. There was too much at stake. (See S. Doc. 248, pp. 56 et seq., and record, p. 3351.) If the Cunningham claims were patented, that action would be a precedent and 150,000 acres would likely go in the same way. See Glavis's letter of September 20, 1909 (list, p. 511), to the President.

Mr. Ballinger's private secretary, Mr. Carr, inquired of Mr. Schwartz, April 14, 1909, as to status of Cunningham group. (Record, p. 208.)

At the request of Mr. Carr, Schwartz on April 20, 1909, prepared a reply to the letter of Miles C. Moore of April 9, and this was submitted to Secretary Ballinger. (Record, pp. 3617, 3618.)

On April 14, 1909, Secretary Ballinger used this language in a letter of instructions to Commissioner Dennett: "Your officers, therefore, will have to justify themselves completely in the scope of the investigations which they undertake." (Record, p. 191.)

Secretary Ballinger dictated and signed the reply to Moore's letter of March 24, 1909. (Record, p. 239.)

Commissioner Dennett wrote Schwartz (record, p. 260) July 20, 1909, in which he uses this language: "He [meaning Glavis] will make about 40 favorable and about 500 unfavorable reports; the way things will commence to drop will be amusing. *The Judge says it will all come out; Congress will have to come to the rescue.* [Italics mine.] However, all the rescue that Congress gave before amounted to very little." (Record, p. 261.)

July 22, 1909, Commissioner Dennett telegraphed Secretary Ballinger (record, p. 271):

Advise telegraphing Schwartz authorizing him to delay issuing notices in important cases subject our talk here until Sheridan can examine evidence obtained.

From all of which it would seem clear that Secretary Ballinger was quite well posted about what was going on in connection with the Alaska coal cases, and especially the Cunningham group, in which Miles C. Moore was interested and his other former clients.

It would appear that Secretary Ballinger believed all along that the Alaska coal claimants had not complied with the law of 1904; that their one chance was to attempt to obtain patents under the act of 1908, and when they decided not to depend on that act they had no legal right to patents, and their only hope was that Congress might come to their rescue.

In that state of mind it was not meeting the obligation resting on him to surrender entirely the care of these cases to other hands, even if he did that.

If he was disqualified from giving full and conscientious consideration to these cases and passing upon them, he was disqualified from serving as Secretary of the Interior. That argues he was ineligible to the position in the first place, by reason of his relation to the parties who had large interest at stake adverse to the Government and arising and to be determined in his department.

There is seldom any need for perpetuating an error.

Ninth. That he aided the movement to force the Cunningham claims to a hearing before the Government was prepared to proceed and placed the management of the cases in the hands of an inexperienced attorney, they being, in a measure, test cases.

We have already referred to the evidence which calls for this finding.

Under orders from his superiors, Glavis and his force were occupied with other work. There were the Oregon cases, the Pacific Furniture cases (record, p. 149), the C. A. Smith cases and special examinations (record, pp. 154, 155), Washington Coal cases (record, p. 144), and Portland Coal and Coke cases (record, p. 154), taking up the time from October, 1908, until March, 1909.

The work was pursued diligently between March and July, 1909. (Record, pp. 183–199.) In addition to what we have said, we may note that Schwartz went to Seattle in June, 1909, and conferred with Glavis on the 20th. (Record, p. 4272.) Schwartz says he wanted to go to a hearing before the field examinations and Glavis did not.

On June 29 Schwartz telegraphed Glavis: "Cunningham group elect to stand on old law. Immediate hearing will follow. Be prepared with your evidence." (Record, p. 244.)

June 30, he telegraphed Glavis: "Submit Cunningham report." (Record, p. 245.)

June 29, Glavis asked to have Jones assist him in Seattle. Schwartz refused. (Record, p. 246.)

June 29 Glavis telegraphed he would mail unfavorable report on the Cunningham group, and on 30th telegraphed again:

Valuable evidence Alaska coal cases still being secured. New phases develop as investigation progresses. Can not consistently make final reports while further evidence is avail
Cunningham group included. Time should be extended to about 60 days. (Record, p. 247.)

Schwartz replied, July 1, 1909:

Reports must be submitted at once as per instruction and agreement. You may, of course, continue investigations. Reports are wanted now. Will send man to Seattle to take charge of investigations and conduct cases in near future. Meantime continue investigations. (Record, p. 247.)

July 6, 1909, Glavis telegraphed Schwartz:

Government's case would be much strengthened by awaiting result of investigation in Alaska. (S. Doc. 248, p. 520.)

July 16, 1909, Glavis conferred with Secretary Ballinger and explained the situation fully to him and the reasons for a field examination. (Record, p. 258.)

He suggested that Glavis inquire of the Land Office whether his telegram of July 6 and report of July 8 in re Cunningham group had been considered.

Schwartz answered July 17, 1909, informing Glavis that he had telegraphed Sheridan to take complete charge of the Cunningham cases, telling him to assist Sheridan, complaining of expense and time. (S. Doc. 248, p. 525.)

July 21, 1909, Schwartz directed Sheridan to take charge of the Cunningham cases, proceed to Seattle for that purpose and bring them to a prompt conclusion, and signified that the trial need not await the field examination. (Record, p. 265.)

It was known perfectly well that the field examination could not be made except in the summer. Glavis had wired the Land Office on April 20, 1909:

Snow will prevent field examination until July.

Commissioner Dennett arrived in Seattle on July 20 and Mr. Sheridan on the 24th.

On July 27, 1909, Commissioner Dennett wrote Mr. Schwartz:

Sheridan has gone over the cases thoroughly and thinks the evidence which it is hoped to gain from Kennedy's visit to Alaska will be very material, and therefore it is best to postpone until October 15 * * *. The Forestry can be blamed for action in the matter. (Record, p. 281.)

Sheridan's report shows he fully agreed with Glavis regarding the importance of awaiting the field examination. (Record, p. 348.)

I have already alluded to the illuminating letters of Commissioner Dennett to Chief Schwartz, written in a confidential way, from Seattle—particularly, the letters of July 20, 1909, where he says, "The atmosphere is not good at all," and tells about what "the judge" thinks of the situation (list, p. 249), and of July 22, 1909, wherein he complains that "Glavis has those coal cases on the brain." (List, p. 258.)

I have also mentioned the facts and circumstances disclosed by the evidence showing that, while Pierce, Schwartz, and Dennett were moving ostensibly on their own responsibility in the matter, the Secretary was actually and substantially in touch with the situation and therefore responsible for what was done besides being technically and officially responsible.

Mr. Sheridan is not to be criticized for taking hold of the cases and doing the best he could, as I believe he has done. I believe that the views of Glavis and Jones as to the order of proof were better than his, as shown by the course he pursued. It is no fault of his that he had never tried a case in court. He is not to be blamed because he only graduated from a law school a year before taking charge of these very important cases, involving millions of dollars' worth of property. The department must have known he would have the ablest and most experienced lawyers that could be obtained to contend against.

He was practically without experience in the practice of his profession. About all he previously had was comprised in about 41 days' attendance in some hearings. (Record, pp. 4275, 4580, 4614). This was about the extent of his examination of witnesses on the stand. His inexperience is clearly shown by his making objection to questions to his witnesses on cross-examination on the ground that they are leading.

It was positively wicked to place the responsibility of these cases on the shoulders of this young man. It was utterly without excuse, from the Government's standpoint. No reasonable man, with the amount of property involved in these cases alone, to say nothing of the precedent that would be set, which would have an important bearing on vastly more of his property, would intrust the direction and control of such litigation to a young attorney, practically without experience or reputation—that is, one who had never demonstrated, never had the opportunity to demonstrate, his qualifications and capabilities. Why should the Government, with ample means to employ competent counsel, jeopardize its interests by doing what no reasonable individual would do in his own case?

This procedure indicates very strongly that it was not intended to make a serious, sincere contest for the rights of the people in the property involved. It justifies the charge of indifference toward and neglect of great public interests, if not of a positive purpose to sacrifice or throw away those interests.

Every lawyer knows how important it was to develop and clearly bring out the facts in these cases. The law is not uncertain. There are several decisions construing the law. The essential thing was to ascertain and have placed in the record the real facts. A skillful examiner, a diligent, experienced lawyer, after making himself thoroughly familiar with the questions involved, the history and the truth in connection with them, should have been engaged to conduct the Government's case. Less than that should not have satisfied the department. Employing one less qualified showed a lack of due fidelity to a great public trust.

In the circumstances we can not wonder that Glavis was worried. He continued to work on the coal cases until August 9, 1909 (record, pp. 885, 886), when he conferred with Mr. Pinchot in Spokane. At the latter's request Gov. Pardee was called into the conference. The result was Glavis was advised by Mr. Pinchot to lay the facts before the President, and gave him a letter to the President, and that night he left for the East, prepared his report, and presented it in person. In this he did his duty. According to the rule laid down by the President himself, convinced in his own mind, as Glavis was, with his knowledge of the facts in his possession and with his firm conviction that there were other facts not yet disclosed, cumulative and corroborative, when he went to the President, he felt he was within that rule, to wit:

When a subordinate in a Government bureau or department has trustworthy evidence upon which to believe that his chief is dishonest and is defrauding the Government, it is, of course, his duty to submit that evidence to higher authority than his chief. (Record, p. 4510.)

Tenth. That he encouraged insubordination in the Reclamation Service by trying to discredit the director and by issuing orders direct to subordinates in that service without consulting or advising the superiors.

Secretary Ballinger was prejudiced against Director Newell when he took office.

He testified:

I had not the regard for Mr. Newell or estimation of his administrative ability that some had. * * * I am frank to say that I did not have full confidence in Mr. Newell as to his administrative ability in handling this service. (Record, p. 3642.)

As early as March 17, 1909, he sent for Mr. Davis, the engineer in that service, and criticized the Reclamation Service (record, p. 1696) and expressed to him a lack of confidence in Mr. Newell's ability (record, p. 1697). He admitted, too, that he had only a limited knowledge of the work of the service. "Current talk" had influenced him. He desired Mr. Davis to move his office from the Reclamation Bureau to the office of the Secretary. (Record, p. 1700.)

In this way he ignored the director and gave him to understand he wished to consult with the engineer rather than the director. (Record, p. 1998.) Newspaper articles, evidently inspired by the Secretary, appeared, criticizing Director Newell. (Record, pp. 1769, 1944, 1966, 4211,) Mr. Davis was impressed the Secretary was in sympathy with those attacks on Mr. Newell. (Record, p. 4211.) He intended to displace Mr. Newell and appoint his friend Thomson to that position. The "personal" and "confidential" correspondence with Thomson shows that conclusively. (Record, p. 4462; Comp., pp. 1294–1300.)

Note particularly the letter of May 22, 1909, in which he mentions having "difficulty in bringing the Reclamation Service into proper accord with the law * * *" and concludes by saying:

The salary of the director, as it now stands, is $7,500 per annum; that of the chief engineer $6,000; consulting engineers are paid $5,400. (Comp., p. 1297.)

In the letter of April 19, 1909 (Comp., p. 1295), he wrote Thomson:

I am putting in the place of one of the Secretary's inspectors a young engineer, whom I expect to send into the field * * * to advise me independent of the director and chief engineer and other engineers of the Reclamation Service * * *.

On May 11 he assured Thomson he had not "abandoned hope of securing your services in the matter about which we conferred in Seattle." (Comp., p. 1296.)

He gave orders over the head of the director to field engineers without notifying either the chief engineer or the director. (Record, pp. 1787, 1978.) He abolished the cooperative cer-

tificate plan without consulting Mr. Newell or Mr. Davis. (Record, p. 1979.) He planned to deprive Mr. Newell of any real authority. (Record, p. 3682.)

On June 10, 1909, he told Mr. Davis he intended to remove Mr. Newell. (Record, p. 1766.) He did not take that course, but seems to have schemed and devised means for forcing him to resign instead. May 22 (Comp., p. 1297) he wrote Thomson that, in speaking with the President that day "it was agreed that no change would be made in the head of the Reclamation Service until he had an opportunity to meet you." This was designed to take place shortly at Seattle. Secretary Ballinger seemed to take sides with the critics and against the service, to its great detriment. Perhaps his idea was to bring it into disrepute, shake, if not destroy, public confidence in it, force out the men who have been long connected with it and have proven their competency, and then introduce his friend Thomson and some young engineer and rehabilitate it, taking credit to himself with some to his appointees, for restoring it.

It is impossible to see any possible good that could arise from his attitude toward the Reclamation Service, and undoubtedly it was fraught with much harm. Mr. Davis very frankly told the Secretary that he believed Mr. Newell's removal, under the circumstances as they existed, "would be taken as an announcement by the service that merit did not count under this administration." (Record, p. 1766.)

There was no need to find a place for Mr. Vivian at this time. (Comp., p. 1301.) There would have been no occasion to consult Mr. Hitchcock, either. Mr. Ballinger had the man all ready to take Mr. Newell's place—his friend Thomson. This indirection and petty way of dealing with the service was unbecoming the high office of Secretary and unworthy that official. Either he should have removed the director or he should have treated him decently and given him proper cooperation. His actions were destructive of efficiency. He should have supported the officers or got rid of them. The effect of his conduct was to demoralize the service and bring failure to its work At one time practically all the engineers considered resigning in a body, and Mr. Fitch did resign. Many of them could obtain more compensation out of the service, but they were interested in the work and desired to make a success of the Government's undertakings. Mr. Davis truly summed up the matter to the Secretary when he said:

> I told him then—in as strong language as I thought politeness and a proper respect would permit—that, in my judgment, his entire course since he had been announced as Secretary of the Interior, so far as my knowledge went, had been one that was subversive of the interests of efficiency in the Reclamation Service and tended to its disintegration. (Record, p. 1766.)

Davis was in position to know, and did know, and he had the courage to express the truth.

That the Secretary was willing to make use of this important service, which has to do with projects on which the Government has already expended $50,000,000 and must spend some $70,000,000 more, to reward political friends, is shown by the Thomson correspondence and by the offer of a position in the service to a Colorado politician named Vivian (record, pp. 3853, 3854), as mentioned in the Denver Republican of May 20, 1909, to wit:

> Senator GUGGENHEIM, with the authority of the Secretary of the Interior, has offered State Chairman John F. Vivian a position as chief of a bureau which is to be created in the Reclamation Service, to take charge of colonizing the various Government irrigation projects as they are completed. (Record, p. 1968.)

The salary of $3,000 did not sufficiently appeal to Mr. Vivian and he declined the offer. As if it was not enough to Lawlerize this service the Secretary was ready to Vivianize it.

Before the Government proceeds far with the expenditure of that additional seventy million it is advisable to have a new head.

Eleventh. That he condoned highly improper conduct on the part of Mr. Perkins, head of the Chicago office of the Reclamation Service, and contrary to the recommendations of the director and chief engineer retained him, with increased power, directing him to report to Director Newell, whose authority he had already overridden.

Mr. Perkins is an engineer in charge of the Chicago office of the Reclamation Service. Mr. Perkins testified (record, p. 4636):

> The particular function of this office is what is known as a transportation office. Our duty is that of dealing with the railroads which reach the West.

That his duty particularly was "obtaining contracts and concessions from the various railroads." A large amount of freight is shipped to the various projects, and the effort is "to get the best terms from any railroad for the handling of that freight * * *." (Record, p. 4636.) He testified:

> Up to the end of this past year * * * we have settled $2,000,000 of railroad accounts—bills rendered us for freight. * * * They are carrying this freight to our projects for 58 per cent of their ordinary charge to the people. (Record, p. 4637.)

The railroads principally serving these 27 projects are the Great Northern, the Northern Pacific, the Burlington, the Santa Fe, and those railroads known as the Harriman lines, to wit, the Union Pacific and the Southern Pacific. (Record, p. 4638.)

A "black-tent" lecture tour was arranged by the Harriman roads, and advertised the work of reclamation. Mr. Perkins "took charge of all conferences with the railroads," and "directed the work which they should do" (record, p. 4640); that is, the black-tent people. A black tent was used in order to give stereopticon views along with the lectures. Perkins says:

> We had two lecturers—Mr. Maynard and Mr. Patton * * *. Men I had trained and written lectures for. Then there was a man named Mackey, who went with them distributing literature, and two other men, lantern operators.

The direct expenses were borne by four railroads, which were known as the Harriman roads; they contributed $5,000. The Santa Fe Railroad contributed $2,000, and the Chicago & Northern Road contributed $1,000. But, beyond that, the Chicago, Burlington & Quincy spent several thousand dollars in printing pamphlets to be distributed. The Northern Pacific Road spent several thousand dollars—in fact, every railroad that served reclamation projects expended money in this work except the Great Northern Railroad. (Record, p. 4641.) The latter road "protested concerning these lectures."

These lectures which Perkins delivered were given under the auspices of the Reclamation Service without authorization by Mr. Newell or Secretary Ballinger. Mr. Perkins says that $100 per month was to be spent by him in various expenses in connection with the black-tent work; he accounted for that and received no personal benefit from it. (Record, p. 4045.) But, he made a contract with Mr. E. O. McCormick, of the Harriman roads, to deliver a series of lectures, not to exceed six in any one month, within six hours' travel of Chicago, and for each lecture he was to receive $50, which was to cover all expenses. (Record, p. 4045.) He was to be paid by the Harriman roads (record, p. 4645); they were to collect from the various lines and water users' associations. Mr. Perkins received $300 per month for four months. His contract was for a year, but he broke his contract, because about December 8 or 9 Secretary Ballinger told him—

> Do not undertake to deliver any more of those lectures. I do not approve of your doing so. (Record, p. 4046.)

He completed after that a few he had been paid for and quit. (Record, p. 4047.)

Mr. A. P. Davis, acting director, wrote Mr. Perkins, November 17, 1909 (record, p. 1830):

> It is also noted that you are now and have been for the past four months receiving $300 per month from the Union Pacific Railroad for your own services. This action on your part is not understood, and it is requested that you inform this office upon what authority you receive a salary for representing private interests, and that you submit at once a full report explaining your actions in this matter.

Mr. H. E. Huffer, fiscal inspector to the Reclamation Service, made a report concerning the work of the Chicago office, dated November 18, 1909 (record, pp. 1830–1832), and about November 18, 1909, Chief Engineer Davis transmitted it to Director Newell, saying:

> * * * In view of the facts therein set forth, and of my previously expressed opinions on this subject, I respectfully recommend that the publicity work being handled by Mr. Perkins be discontinued and that Mr. Perkins be requested to immediately submit his resignation. (Record, p. 1833.)

Mr. Davis spoke to Secretary Ballinger of this action. (Record, p. 1833.)

The Lind report is found at page 1841 and the Evans and Callahan report at pages 1843–1849.

The Huffer report shows Perkins received $300 more than he accounted for (record, pp. 1826, 1827, 1988), and that the Harriman lines were favored in shipments at a loss to the Government. (Record, p. 4682.)

The claim that these lectures by Perkins were authorized is not sustained by the evidence. The correspondence on the subject is dated February, 1908, and appears at page 4154. The letter from Mr. Newell certainly does not authorize the engagement made by Mr. Perkins with a railroad having extensive business relations with the Government, to receive compensation from it under circumstances which very possibly might influence him in discriminating between the road employing him and the railroads with whom the Government was dealing.

Mr. Newell, following Mr. Davis's recommendation, intimated to Perkins, December 4, the desirability of his resignation. (Record, p. 1990.)

Mr. Davis told Secretary Ballinger of the matter, and the latter remarked that "Perkins was, he thought, a good man, and, at any rate, he had a large number of influential friends

in Chicago, and he thought I (Davis) was wrong in my view of the matter, but that the office was badly run. He recognized that it was extravagant, badly handled, and ought to be reorganized." (Record, p. 1793.) Mr. Davis further testified that—

The Secretary emphatically instructed me that nothing should be done that in any way would hurt Mr. Perkins's feelings or reflect on him in any way. (Record, p. 1793.)

Mr. Ballinger denies this, but in the letter of instructions to Dr. Lind, who was directed to investigate the Chicago office, signed by Mr. Newell, the last clause was inserted by Mr. Davis, as a result of his conversation with the Secretary, "that nothing therewith (the investigation) is to be construed as a reflection upon Mr. Perkins or his administration" (record, p. 1837), and corroborates Mr. Davis as to what took place at that time.

This lecturing under pay of the railroad company while receiving a salary of $3,000 per annum from the Government for his services, thereby earning $300 per month under this private enterprise, under the circumstances was a species of "graft," pure and simple, and Mr. Davis and Mr. Newell should have been sustained in their view regarding it, and Perkins should have been separated from the service. On the contrary, what happened? The Secretary adopted the Evans-Callahan report (which itself shows Perkins was receiving private remuneration from the railroad, of which he kept no account in the office—record, pp. 1845–1849) and made an order therein, which is still in force (record, pp. 1843–1845), to the effect, among other things—

(2) That until otherwise directed Mr. Perkins be placed in entire charge of the office and held responsible for the efficient conduct and management thereof.

Mr. Davis says:

This order is in force to-day. It is the one that directed the work to be put into Perkins's charge more fully, claiming the reason of inefficiency was the interference of the Washington office; that Perkins did not have full enough authority, and certain reductions in the force were ordered. (Record, p. 1851.)

Mr. Davis further testified:

Yes, sir; he is still in charge of the Chicago office. Of course, while he reports nominally to the Washington office (the Reclamation Office), the Washington office has no control over him now. (Record, p. 1851.)

While he reports directly to the Director of the Reclamation Service, no one but the Secretary has an control or can exercise any authority over him.

Thus, and the outcome and effect of all this is, plain, unvarnished graft is not punished or rebuked, but is encouraged and rewarded by the Secretary in this instance.

Mr. Davis impressed everyone that he was a fair, truthful, and conscientious witness. He expressed himself with clearness, candor, and accuracy. He seemed impartial and disinterested. It required no testimony to prove what must have been the significance of Perkins's conduct as affecting the Reclamation Service itself, but Mr. Davis relieves us of any question on that point by his answer:

I think it is destructive of moral standards and a condition which should not be permitted to exist. I think every engineer and every man in the service regards it as distinctly demoralizing to permit any man to receive money from a corporation with whom we are doing business. (Record, p. 1988.)

If the Secretary's standards are lower than that, so much the worse for him. If his standards were up to that, he should have indicated the fact by pronouncing against the practice and condemned it in a way that would have impressed the subordinates in his department. On the contrary, he deliberately proceeded to humiliate the director by not only sustaining Perkins, but actually promoting him by increasing his authority and making him independent as to the director.

Twelfth. The last finding follows from the foregoing as a matter of course—that Mr. Ballinger has not been true to the trust reposed in him as Secretary of the Interior, that he is not deserving of public confidence, and that he should be requested by the proper authority to resign his office.

In his cross-examination the Secretary was often evasive, apparently afraid of the truth, and instead of answering the questions frankly and directly he would indulge in explosive speeches and laudatory comments regarding himself. He would protest against questions which he had invited and were relevant. He would aver his uprightness and integrity and purity of motives without answering the inquiry.

At times it would appear that he chiefly occupied himself with receiving callers and signing letters which he did not read, and trusted the real work of the office to others. This is, perhaps, what he meant when he said:

The only thing I touched, either as commissioner or as Secretary, is the broad administrative point of view. (Record, p. 3943.)

Perhaps it is for this reason that some 40,000 cases are undisposed of in the Land Office, and but for a few faithful and industrious and competent subordinates there would be general demoralization in the whole department. He presented a humiliating spectacle when cross-examined regarding the Lawler memorandum. (Record, pp. 3865–3867.) The evasiveness and inaccuracies in his answers clearly appear and are pointed out specifically by Mr. Kerby. (Record, pp. 4446–4448.)

At this point we might make reference to Lawler's connection with the disposition of the Glavis report, so-called "charges."

Assistant Attorney General Lawler, some years ago, handled the prosecution for the Government in some cases in which L. R. Glavis was the Government's chief witness and special agent. Glavis criticized Lawler. That made Lawler very angry, and he denounced Glavis as untruthful and dishonest. That was his state of mind toward Glavis when the Secretary took him to see the President at Beverly to answer the Glavis letter. It is highly probable that he expressed his feelings toward Glavis to the Secretary. When the Secretary and Lawler went to the President, and Lawler was directed to prepare the letter dismissing Glavis and exonerating the Secretary, common decency would have prompted Lawler, feeling as he says he did toward Glavis, that he was untruthful and dishonest, bearing in his heart the malice he did, to so inform the President and ask that the task assigned him be given another. Evidently he relished the opportunity to treat this grist to his mill, and the letter he prepared speaks out the hatred he had for Glavis. So much so that the President eliminated and refused to adopt his harsh expressions and substituted for his abuse and condemnation the statement:

The whole record shows that Mr. Glavis was honestly convinced of the illegal character of the claims in the Cunningham group, and that he was seeking evidence to defeat the claims. (Record, p. 4507.)

Was it possible for such a man as Lawler to make a fair and just report concerning Glavis? I think not, and his memorandum, in the getting of which so much difficulty was encountered, shows it.

The President was imposed on, if not deceived, by the Secretary taking Lawler into the case.

Lawler was not the man to summarize the record and submit it judicially to the President. The Secretary must have known Lawler's enmity toward Glavis, and that his malice biased his judgment and disqualified him from placing before the President the condensed facts and comments thereon impartially.

The Secretary's answer to the question, "What did Mr. Lawler take with him when he went to Beverly?" and so forth, that he took "a grip with some clothes in it; I do not know what else he took" (record, p. 3865), comports with his actions in bringing Lawler into the matter and holding him out as capable of rendering an unbiased opinion on the merits. (Record, p. 4221.)

His testimony regarding his letter to Schwartz about consulting Mr. Hitchcock in connection with ten $1,500 appointments in the Land Office illustrates a disposition to shirk responsibility and deceive. (Record, pp. 3788–3791, 3794, 3796.) The Department of Justice, if he wanted lawyers, the Department of Agriculture, if he wished certain experts, would appear more appropriate advisers if he had to go outside his own department for opinions or in search for men. He says he had no idea of conferring political benefits or favors. (See record, pp. 3787, 3788, 3789, 3794, 3796.) He had known the Postmaster General only casually until he met him in the Cabinet. Why consult him regarding the naming of these 10 men? (See letter of July 25, 1909, record, pp. 580, 3787.)

It is difficult to see how solicitude for the good of the service could have necessitated the advice of Mr. Hitchcock. A frank admission that Mr. Hitchcock might know some good Republicans whom he felt should be rewarded and whom he thought were capable of rendering satisfactory service, in which case the Secretary offered this opportunity, would probably have more accurately expressed the situation.

Likewise, his testimony regarding a telegram which he had written and signed and had sent to Gov. Moore February 28 in reference to the Cunningham claims (record, p. 3964) was lacking in candor. His admission of interest in the Hanford Irrigation Co. had to be corkscrewed out of him by Mr. Brandeis (record, pp. 4082, 4083), and the whole cross-examination was discreditable to the Secretary.

In this discussion, as bearing on the matters presented to the committee, I may say:

I do not agree with the suggestion "that the Secretary of the Interior, in dealing with the public lands, has authority to do that which he may conceive advisable and for the public good unless it be forbidden by some statute."

On the contrary, I deny that he has such extensive authority. I agree with Mr. Vertrees, the able counsel for Mr. Ballinger, that the Secretary must find, for the exercise of his power, authority expressly conferred by Congress or necessarily or fairly implied from the statute. (Record, p. 5323.)

I agree with the President, that "he is the best friend of the policy of conservation of national resources who insists that every step taken in that direction should be within the law and buttressed by legal authority." (Record, p. 4514.)

Counsel invoke these principles to justify the course of Secretary Ballinger in respect to the exercise of the so-called "supervisory power" in (1) the withdrawal of public lands from sale, (2) the withdrawal of water sites, (3) the issuing of cooperative certificates, (4) the cooperative agreement between Secretary of the Interior and Secretary of Agriculture regarding work of Forest Service on Indian reservations, (5) reclamation work whereby the price to be paid by water users could be fixed at any time prior to completion and projects could be undertaken for reclamation of private lands.

The trouble is, the Secretary, while invoking the law, has disregarded it and has made that excuse for pursuing a course with certain personal ends in view, not for public good, and to accomplish purposes not in the public interest. In the first place, the existence of the power he has questioned has been assumed and exercised by executive officers from earliest times, as shown by report of Senate Committee on Pubic Lands. (Record, p. 1559.)

In the next place, the withdrawals have always been "temporary"—that is, "in aid of legislation"—which the Secretary concedes was allowable, if not authorized, and shortly after restoring the lands he proceeded to do precisely what he had condemned. Congress has recently seen fit to expressly empower the Executive to do what evidently it has been highly desirable he should have the power to do in the past and what he has heretofore done, recognizing that the withdrawal of land from entry is a necessary first step in any movement to conserve our national resources.

Further than that, if the Secretary had doubts as to the legality of previous withdrawals, he might well have refrained from making any withdrawals himself, but he might have resolved that doubt in favor of withdrawals made by competent officials in a previous administration for which he was in no wise responsible. Instead of that he ordered restorations of previous withdrawals and then made withdrawals of practically the same land for the same purposes within a month. He demanded restoration of all withdrawals immediately on taking office. (Record, pp. 1699, 1925, 1947, 1948, 5198.) By April 10 all but two of the sites had been restored. May 11 he began to rewithdraw. (Record, pp. 3442-3443.) He proceeded to exercise a power which he declared his predecessor in office did not possess.

The reclamation act of 1902 gives power to make certain withdrawals. Section 4 of the act specifically deals with the subject of private lands. Congress extended the operation of that act to Texas, in which State there are no public lands. The Secretary admits that some private lands may be incidentally included in a project. Who is to say how much or how little? Plainly, this is more of a quibble invoked for the purpose of raising a question which tends to confuse but not enlighten. The United States circuit court of appeals, ninth circuit, in the case of Burley *v.* United States et al., July 5, 1910, decided that the irrigation act of June 17, 1902, "contemplated the irrigation of private lands as well as lands belonging to the Government."

The "cooperative-certificate" plan was advantageous to the Government and was administered within the law. Allotments did not constitute liabilities. The reclamation fund was always larger than the aggregate of all contracts and of all reclamation certificates. It was larger than the sum of all liabilities—including these certificates. Therefore, under the opinion of the Attorney General, the certificates were legal, the plan was feasible, and calculated to benefit the people, and it was entirely safe for the Government.

The "cooperative agreement" was in force from January, 1908, until July, 1909, when it was terminated by the Department of the Interior. The customary "legal opinion" is again convenient. It is again easy to "wrest once the law to your authority."

The expert foresters ought to be under control of the Forester, Instead of the Indian Bureau employing outsiders to do the work there was no sound administrative or fiscal reason why it could not employ the foresters and pay them.

The comptroller's opinion of September 3, 1908, had no bearing on the question upon which the departments separated. The practice under the agreement continued after that opinion as before and until the action of Secretary Ballinger. See his telegrams to Acting Secretary Pierce of July 14 and July 15, 1909, to the effect, "cooperation should mean transfer of experts to our rolls, so as to retain jurisdiction of our service."

The Secretary's great respect for law appears a subterfuge. It was not the law that spoke to him in the wilderness. His promises to Thomson, his dislike of Newell, his want of sympathy with Garfield and Pinchot, his love for Perkins and others in like situations, his inclinations toward Vivian, Perkins, Hitchcock, and the way they pointed, his consideration for Moore, Smith, Cunningham, Henry, and their associates—these were some of the influences that devised the scheme of appeal to the law, the very letter of which became important, and called for "opinions" at "my request" to sustain him as he worked out his plans in disregard of the large public interests in his hands.

The idea that conservation is a fad, about equivalent to "conversation," will not commend itself to the people of this country to-day. That light suggestion accords with the Secretary's attitude toward great governmental agencies.

CONSERVATION.

The Secretary had scarcely undertaken his duties before he began to lay plans to strike a blow to the policy of conservation of natural resources. The Reclamation Service was his first object of attack. Director Newell seemed in his way, and various steps to humiliate him were taken. He condemned the withdrawals which had been made by his predecessor, questioned the theretofore claimed and exercised supervisory powers of the Executive; represented that the Reclamation Service recommended restorations, when the truth was such recommendations were dictated and ordered by him. Very soon he began to order restorations. Evidently inquiries and protests came in, and then within a month he began to withdraw some of the same lands.

If there was no authority originally to make such withdrawals, there was no authority to make rewithdrawals. No new authority had been given, no new statute was enacted on the subject. It is doubtless true some of the projects have not turned out as expected. We have seen that some $50,000,000 have been spent on some 27 projects, and some $70,000,000 more will be needed to complete them. It is possible the Government may not get back all the money it is putting in these undertakings, but they are being worked out on the understanding and assurance that it will. No doubt the details need careful supervision, and while the Secretary has not suggested abandonment or discontinuance of any project, he has not pointed out any remedy nor suggested any correction of intimated faults and mistakes, but has contented himself with assaults on the personnel without offering any improvement in the policy or conduct of the service. He has not formulated any plan providing for any change in the methods or administration or suggested wherein improvements can be made.

I feel inclined to accept and approve the doctrine of conservation as stated by Mr. Pepper (record, p. 5309), to wit:

> The first principle of conservation is development, the use of the natural resources now existing on this continent for the benefit of the people who live here now. The second principle of conservation is prevention of waste. The third is that the development of our natural resources must be for the many and not merely for the profit of a few.

I believe we should urge that in practice and administration these principles be observed, and we should favor such legislation as will accomplish these ends.

That we should encourage and accomplish the highest and best development and use of our coal, timber, arid lands, and water power. (Record, p. 5184.)

Studying the Secretary's own testimony we are pressed to the conclusion that the responsible functions, the chief powers as well as the work—other than detail, such as seeing callers, and signing letters which were not read—seem to have been delegated to and placed upon subordinates and employees. There has been lacking the constant presence of a guiding, directing, forceful head, fully meeting and appreciating the larger responsibilities of the office.

Pinchot, Glavis, Jones, Price, Shaw, Kerby, and possibly Hoyt, are claimed to be "snakes" and have met the fate decreed. Newell and Davis and perhaps others will likely disappear as soon as the Secretary can get his hands from the position of being "up in the air."

But for a few subordinates who have had experience there would be demoralization in the department and now there appear thousands of cases which have been pending for years yet undisposed of, notwithstanding the appropriation by Congress, March 14, 1909, of $1,000,000 to bring up the work. (S. Doc. 248, p. 171.)

The removal of those who have been unwilling to act as fawning sycophants or play the rôle of servile underlings at the sacrifice of public interests, the people's property, the country's resources, did not meet the trouble or overcome the difficulties. The trouble was with the head of the department.

After considering the whole record we must believe the derelictions mentioned by Glavis (record, p. 445 et seq.) were real, not imaginary; that the present Secretary of the Interior is not

the man best fitted for the office he holds—a strong man of unquestioned integrity, competent as well as honest, subject to no influences so commanding as the highest sense of duty, should be at the head of this most important department of the Government; that his conduct and associations and influences justly aroused suspicion; that he has been and is inclined to favor private interests rather than care for those of the public; that while no actual corruption is shown, it can scarcely be said that he is guiltless of official wrongdoing of a nature warranting criticism; that he was not in sympathy with the advocates of conservation as defined by the President and his predecessor, and supported by the officers in the Forest and Reclamation Service; and by direction, and more or less deception, he set about doing that cause serious injury; and that he "has been unfaithful both to the public, whose property he has endangered, and to the President, whom he has deceived."

We hark back to the trinity of Jefferson's political faith, as sound and applicable to-day, as commanding for our guidance now as when announced, to wit, a strict construction of the Constitution, economy in expenditures, and honest men in office.

Secretary Ballinger's methods we can not approve—they are the ordinary methods of the "boss" in politics.

His administration we can not indorse—it is the form of administration well recognized as of the "machine" stamp.

His standards of official conduct and public duty we must condemn—they are the ideals of the "professional politician," which lead to traffic in public office.

This record impresses one with the conviction that the trouble has been a chronic misconception of fiduciary responsibility, and the resolution ought to be adopted.

ELECTION OF SENATORS BY DIRECT VOTE.

Mr. BORAH. Mr. President, conditions might arise which would induce me to favor a constitutional amendment the effect of which would be to bring about some fundamental change in our plan of government, but I can not now imagine such conditions. They would have to be imminent, overwhelming, and of a permanent nature. I accept without hesitancy and in full faith the wisdom of the fathers as expressed in our institutions. I believe that our Government as planned, submitted, and adopted was and is sufficient for all purposes for which governments are created. I believe that under our institutions the human family may reach its highest attainments in intellectual and moral development; that under them when faithfully administered complete justice may be assured to all and all may enjoy that political freedom and industrial prosperity which modern governments are supposed not only to permit but in a measure to augment. The fault is not in our plan of government, but in its faulty administration.

Mr. President, what change in our scheme or plan of government does this proposed amendment contemplate? Will the mere change of the mode of selecting United States Senators effect or bring about any fundamental or incidental change in the scheme or plan of government as submitted to us by those who framed it? Will it not rather precisely bring about that which they desired, but which, owing to changed conditions, can not under the present system be realized? We ought not out of mere reverence for our institutions refuse to make a candid examination of proposed changes. It seems to me the proposed change instead of destroying the object and purpose of the fathers will serve those purposes; that this amendment is in complete harmony with the fundamental principles upon which they constructed the two Houses of Congress.

Amendments which make more secure the principles upon which our Government was founded, more certain the realization of the purposes and objects for which it was founded, are not to be taken as expressing either lack of faith in or a lack of respect for our institutions. It will not serve any useful purpose in matters of such grave importance to simply criticize those who advocate such amendments as radicals or as men desirous of ingrafting upon our Government new or untried theories of government. Progress can only be made and truth ascertained by a dispassionate examination of the question whether such amendments do in fact work fundamental changes or whether, by meeting changed conditions, they serve only to accomplish precisely what our Government was, in its ultimate effect, designed to accomplish—clean, efficient, and faithful public service. Our fathers understood the science of government as no other single group of men has ever understood it. It is altogether probable that if the plan upon which they built fails, with it will pass the hope of a democratic-republican form of government. But it will not fail if, studying closely the changed conditions brought about by our marvelous industrial progress and great economic changes, we make only such changes and modifications in government as will prevent those industrial conditions and economic changes from themselves working in subtle and silent ways modifications and changes in our institutions. We do not want to find ourselves in the attitude of a people who are satisfied with the shell of a government from which all real power has departed. We want the substance at all times, and not the shadow. We want the real power and the real responsibility to remain precisely where the fathers placed it, with the people.

We agree fully, too, with the proposition that the sober second thought is always safest in the important affairs of government. When matters of such vast moment depend upon human conduct, it is well indeed to have such checks and balances as will insure reflection and mature consideration before final action. This is simply transferring a wise rule of human conduct to affairs of government. In this the fathers showed great wisdom. No one would in this respect work a change. But, while the fathers wanted to have reflection and consideration, time for investigation and for passion to subside; while they wanted the sober second thought of the people, there could be no doubt but they wanted action when finally taken to be the action of the people and not the action of special influences or unfriendly forces. While they wanted the people to be induced to reflect and consider, they wanted a form of government which would insure the faithful recording of the result after the people had reflected and considered. It was never their intention to leave room for some sinister influence or power to interpose between the people's deliberate judgment and its achievement and realization. If by reason of conditions which they could not foresee that is now possible, then it devolves upon those who have the great burden of preserving these institutions in their original integrity to modify our Constitution, if we can do so, so as to prevent these things from happening.

The framers of the Government understood well that changes would have to be made in our form of government; that this would have to be true in order to keep the framework in its original integrity. In our Constitution, Article V, they provided for meeting these conditions. After they had written the Constitution and given it to the world as the best in them of heart and mind they turned about and said in Article V: While this is our work, we intrust it all to posterity with full power to change every line and syllable as in its wisdom it may find it meet to do. Article V is the solemn declaration of the fathers' faith in the wisdom and patriotism of their children and their children's children. It is the first instance in all written constitutions of a double method of amendment. It will be said that amendments were made difficult. That is true. In order to insure the most earnest investigation and the most faithful discussion before any amendment should be had—a very wise rule, indeed. We find no fault with the slow process in which changes are to be made. In this the fathers again manifested that wisdom which was and is akin to inspiration.

No complaint can be had at this time as to haste or lack of consideration in regard to this amendment. Mr. Wilson, of Pennsylvania, presented and urged the matter in the Constitutional Convention itself. As early as 1826 a resolution was submitted to Congress looking to this change in the manner of electing Senators. It has been before Congress session after session for 85 years. It has met the approval of the first branch of Congress many times. It has received serious discussion here upon different occasions by some of the ablest men who have occupied seats in this Chamber. At least 32 States have declared in favor of the amendment or the principle. It has been the subject for years of discussion by editors and publicists. Literature on the subject is very extensive. And now, after nearly a century of discussion and consideration, the sober second thought of the people upon which the fathers so implicitly relied is greatly in its favor. If government of the people, by the people, and for the people has any bearing this record ought to be made now and the judgment of the people here entered in accordance with this earnest and long-standing demand.

Our Constitution says:

> The Senate of the United States shall be composed of two Senators from each State.

Thereafter in that portion of the instrument providing methods of amendment it is said:

> No State without its consent shall be deprived of its equal representation in the Senate.

We are now told with unusual earnestness and perturbation that if the mode of selecting Senators is to be changed we must be prepared to meet the demand for a change in those provisions of the Constitution; that there will be a demand for representation upon this floor in proportion to population.

Thus they would excite our fears and take advantage of our credulity. We are to be persuaded from the advocacy of a measure, which we believe to be righteous, out of the danger that for reasons wholly disconnected in logic or principle with the present proposition some other amendment may in time be proposed and adopted. It is in such potent arguments that opposition to this question is represented.

The question of whether representation in the Senate should be in proportion to population or equal as to all the States was in no way affected or controlled by the question as to the mode of electing Senators. Equal representation in the Senate and proportional representation in the House was one of the great compromises of the Constitution between the large and the small States. This compromise was neither augmented nor retarded, embarrassed or accelerated, by the question of the mode of electing Senators.

A study of the debates in the convention and the political literature of the day will not reveal that the mode of electing Senators ever entered into the peculiar elements of that compromise. Had the fathers seen fit to adopt the plan of electing Senators by the people or the plan of electing them by electors, as proposed by Hamilton, the compromise as to equal representation in the Senate and proportional representation for the House would have been made, and made precisely as it was made. We are not disturbing in reason or in logic any compromise of the Constitution. We are not throwing down the bars for proportional representation. No member of the Constitutional Convention so much as suggested that the manner of electing Senators had anything to do with the extent of representation. Neither did anyone propose that if Senators were elected by the people that thereupon there should be proportional representation. That piece of irony belongs to the political literature of a later age; to more subtle and resourceful logicians. It will hardly follow that the small States will feel any uncontrollable impulse to give up their equal representation simply because they have been blessed with a cleaner and more efficient mode of electing their Senators. And this right of equal representation can not be taken away by a three-fourths vote of the States. It can only be taken from a State by its individual consent. But this is the argument which has been made to do service against this reasonable and righteous change. I repeat, the manner of electing Senators never did have and never could have any effect upon the question of representation.

Akin to this argument and to the same effect is the argument that by changing the mode or manner of electing Senators we will change the nature of the organization of our Government and of the relation of the States to the Federal Government and of the relation of the Senators to the States. This broad and startling proposition seems worthy of consideration. What possible structure of our Government will be affected by the fact that a Senator appears in this body as a result of the direct vote of the people rather than by the vote of an agent selected by the people to cast that vote? Is it reasonable to assert that by changing the mode of selecting a State officer you change his attitude toward the State, assuming that a correct attitude is one of faithful representation? There are at least a dozen Senators upon this floor who as a practical fact were elected by the direct vote of the people. The people selected them and elected them. The legislature but recorded the decree already rendered. Do they stand in any different relation to their States; are they less regardful of its interests or hampered more in representing it than those who were elected by the legislatures? If the rights of these States are invaded, are their Senators less sensitive to that fact? Does the current of political power flow any better by flowing in a roundabout way through a legislature than when it flows directly from the source of power to one who is to exercise that power?

It is true that the fathers had the conception of an ambassadorial meeting here in Washington, which it is hard for us at this time to grasp. It was natural in that day, for the Members of the Confederate Congress were in a very true sense the ambassadors of the different colonies or States. Each State determined for itself his whole power. They were not appointed or elected under any general constitution for the whole country. The State could rescind the appointment at any time and call him home. And he went to Congress in the true sense of an ambassador from his State. But now we have the Constitution, which makes us in Federal matters one people. To say in this day and age that a Senator represents the invisible, intangible, corporate being, the State, aside from all the elements which make up a State, is but to invoke an overworked fancy. The Senator here does indeed represent the State. But his State includes all that makes up a State, not alone the legislative department, but all the departments of the State government; not alone the corporate and intangible sovereignty, but all that and more—the bone and sinew, the flesh and blood, the territory, the relation of the people to the territory, the hopes, aspirations, and ambitions of the citizens, the social, economic, and industrial life—this is the State in its entirety as a true and faithful Senator represents it. This is the State which the Senators should represent. If he does not represent the State in this respect, it would be because under the vicious system now prevailing some sinister power has intervened and secured a representative for a distinct and special interest within the State. But if the people elect the Senator will he not then be in the fullest and best sense a representative of everything that makes up a State?

The Supreme Court of the United States has said:

> A State in the ordinary sense of the Constitution is a political community of free citizens, occupying a territory of defined boundaries and organized under a Government sanction and limited by a written constitution and established by the consent of the governed.

There is a fundamental distinction to be made between a State and the government of the State, the corporate entity. By the term "government" we mean the organization of the State, the machinery through which its purposes are formulated and executed. But by the term "State" under our Constitution we mean all these things, including the government, the territory, the people, its laws, usages, customs, its moral and industrial interests. In no other sense can a Senator represent a State. The Hebrew people might have been called a nation while they were under the guidance and direction of Moses. They became a state when Joshua settled them in Palestine.

The constitutional recognition of sovereignty remaining in the State is recognized in the principle of equal representation and not in the manner of selecting that representation. The national and federal principle is still preserved, combined and unimpaired, by the equal representation in the Senate and the proportional representation in the House. In like manner the check of one body upon the other is preserved. The object of having two branches of Congress or of any legislative body is to have the representation made by the different constituencies, different interests. Thus we still have, in the language of Mr. Story—

> The Senate represents the voice not of a district, but of a State; not of one State, but all; not of the chosen pursuits of a predominant population in one State, but all the pursuits of all the States.

Would the distinguished Senators from the great State of Texas in any different degree represent the broad and diversified interests of that entire State—the trading and shipping interests upon one side and the vast stock-raising interests upon the other? Would not the Senators from the State of Massachusetts still represent not only the manufacturing interests but the agricultural interests? It would still be true, also, that no law could be passed without a majority of the people and then a majority of the States. The supposed quickness of action under impulse and passion that was sought to be avoided is still avoided. The long service of six years still begets the profound sense of responsibility and guards against unwarranted yielding to passing political gales, which it is so often urged the fathers had in view. None of these fundamental principles are changed by changing the mode of electing. Rather does the change guard against the possibility, and in these times the probability, of securing those who do not represent the State, but interests or particular forces.

It does not destroy the check intended to guard against influence exerted through the passion or prejudice of an hour, while it does tend to guard against sudden changes superinduced by causes more sinister and destructive to democracy, more disintegrating and demoralizing than political upheavals or turmoils. Influences far more to be feared than the hasty and inconsiderate action which the fathers feared are to be dealt with by our present civilization. If our fathers were wise to guard against the one, will not their children display something of the same wisdom if in preserving the one they guard against the other?

One of the most conclusive arguments in favor of taking the election of Senators away from the State legislatures is that these lawmaking bodies may be relieved of an exceptional and unnatural and incongruous duty. Not only is it aside from any duty or function naturally attaching to legislative bodies, but it works to the great and almost constant embarrassment of such a body in its important and natural work. It has demoralized State legislatures more than any one single matter with which they have had to deal. The members of the legislature should be elected upon the sole question of their fitness for the duties of State legislation. After they are elected they should be permitted to perform that important work with an eye single to the moral and industrial interests of the State, disentangled of the purely political task of performing the duties of an

elector. Our States are coming to be almost as important in the field of legislation, if they do what they should do, as was Congress in the beginning of the Government. When measured by their varied interests and population, their moral and industrial growth, individual States are now equal to the 13 States when Congress first assembled. Unfortunately, and to the disturbance of everyone who reflects deeply upon the question, many of the duties of the States are being shifted and subtly attached to the National Government. If there is a gospel of political salvation which ought to be preached in these days with the fire and zeal of Peter the Hermit, it is that of arousing the States to action in these matters of vast and purely local concern. They ought to claim the right to do that which under the Constitution it was expected they would do.

And then, having the right allowed them, they ought to perform their duty with energy and pride, with intelligence and courage, and with the support of every man who loves our form of government. Just in proportion as you withdraw from the people the responsibility of caring for and the zeal in guarding matters of local concern, just in proportion as you take from them the right and relieve them of the duty of looking after those matters peculiarly belonging to local communities, just in that proportion you unfit the citizen for the duties of citizenship, shut the door of the great school of experience in his face, and deprive him of his training. When you do so you are undermining the pillars of the Federal Union. The man who would see the States stealthily shorn of their responsibility as that power is defined, responsibility as placed by the great terms of the charter, is either grossly uninformed as to the history of the rise and reign of the people and the underlying principles of representative government or he is in his nature and make-up an enemy of the federal form of government. There can be no such thing as a great Federal Union without great and powerful States upon which that Union may rest. There can be no such thing as a free and powerful people without a virile, independent, and self-governing citizenship. The only school in God's world for such training is local self-government. It was the great principle upon which our Government was founded. It is just as essential to-day as it was a hundred years ago. It was a great and fundamental truth stated by De Tocqueville when he said:

> I maintain that the most powerful and perhaps the only means of interesting men in the welfare of their country which we still possess is to make them partakers in the Government.

Equally impressive is the statement of one of the most profound students of our system of government, Mr. Bryce, to the effect:

> To the people we go sooner or later; it is upon their wisdom and self-restraint that the stability of the most cunningly devised scheme of government will in the last resort depend.

Shall we not begin this revival, this effort to have the States perform fully and completely the duties devolved upon them by the Constitution, by relieving them of their most demoralizing, embarrassing, and expensive duty? Let us leave these legislative bodies to the great task of building up these institutions and formulating the purposes and policies which attach so closely to and deal so intimately with the daily life of the citizen. Let us relieve them from that which often prevents for a whole session any attention whatever to State matters, which often controls legislatures even from one session to another, which dominates their selection, which leads to vast expense the people must at last pay, which leads to faction and strife.

I urge that reflection will lead many to the conclusion who now think otherwise that the State legislatures should be relieved of this task.

Mr. President, we need not fear to put a little decentralizing influence into our legislatures or our Government. It will not by any means neutralize the centralizing influence which from day to day we plant. We need not fear nor apologize for going back occasionally and connecting up the sources of political power directly with the people. Immediate, direct, constant contact will not hurt us. It will prove wholesome even if it is somewhat ancient and out of style. It will by no means recompense the people for the rights of sovereignty stolen away under the constant asseveration of public welfare. We have traveled a rapid pace since the Civil War. The dynasty of the bureau was born shortly thereafter. It has grown to wonderful proportions. It is now arrogant and imperious, hungry and insatiable for power. Let me uncover one of the landmarks in this movement. A few years ago a child was born in the United States. He grew to manhood and under the laws of his native land he became and was an American citizen, an American citizen whose life and liberty can not be taken away from him, according to the declamation once learned from our schoolbooks, without the judgment of his peers. After he arrived at majority he went to visit the land of his ancestors. Returning to his native shores, he was advised by the agent of one of our bureaus that he could not land. After exhausting his remedy before the department this native-born American citizen sued out a writ of habeas corpus and in due course of proceedings the matter was referred to a referee to take testimony as to whether or not he was a citizen.

The referee found that the petitioner was born in the United States and was a citizen thereof. The matter finally reached the Supreme Court of the United States in the habeas corpus proceedings and a majority of the court held that the action of the ministerial officer was conclusive, and thus it follows that under our present form of government it is possible to banish and expatriate a native-born American citizen through the bureaucratic powers of the Government. I quote a paragraph from Judge Brewer's dissenting opinion:

> It will be borne in mind that the petitioner has been judicially determined to be a free-born American citizen, and the contention of the Government sustained by this court is that a citizen guilty of no crime—for it is no crime for a citizen to come back to his native land—must by action of a ministerial officer be punished by deportation and punishment without trial by jury and without judicial examination. Such a decision is to my mind appalling.

It does not change the principle of law nor the point sought to be established that the party was of Chinese parentage.

Without lingering on this subject to discuss the correctness of the law, the precedent is established and we do not need any other provision nor any other precedent to found here a government more annoying, more embarrassing, more destructive of the rights of the individual citizen, than the most despotic government now in existence. It may be possible that there is a worse form of government than a bureaucratic form of government, but it has yet to be born, for it has never appeared upon the face of the earth.

I might cite a great many instances in which the rights of the citizens have been frittered away before these bureaucratic powers. But it is not my purpose at this time to other than call attention to the matter as an example. We can afford, very well afford, to reach back as an offset to such movements and get close to the people. Those who feel disturbed because of the democratic tendencies of to-day, of the disposition to liberalize in some directions, will find plenty of consolation in the more rapid and universal march in the other direction. If we are to maintain somewhat the equilibrium between the Federal and the National Government, we must make up in certain directions for the Federal Government what we are doing in other directions for the benefit of the National Government.

In the last 20 years there have been a great many prolonged contests in State legislatures which illustrate one of the great evils of the present system. The entire session of the legislature was occupied in the electing of a Senator, to the exclusion of everything else for which they were called together. In some instances special sessions were called at great expense. In some 14 instances States have gone without full representation here because of deadlocks in the legislature. In other instances bribery and corruption have been charged and corruption and scandal has attached to the session. It is not alone that direct and open bribery sometimes prevail, but that which is equally as bad more often prevails—bills and measures are traded up or killed, the public interest is sacrificed or actually bartered away, patronage and office enter into the deal, and the whole affair becomes a disgrace and is of itself sufficient condemnation of the present system.

A brief reference to some of the instances will not be uninstructive. Thus in one State in 1900 in order to prevent the breaking of the deadlock the Democrats and Independents joined to prevent a quorum, and for 28 days they made it impossible to do business of any kind. In another State in 1904 upon roll call one senator and six members of the house answered to their names. The chairman of the joint assembly then ordered the sergeant at arms to bring in the absentees, whom he reported he could not find, whereupon the assembly adjourned for lack of a quorum. In another State in 1905 the election took place in the midst of a riot. In order to prevent the hour of adjournment before an election could be secured an attempt was made to stop the clock. The Democrats tried to prevent this; the Republicans tried to bring it about. A fist fight and general all-around row started; desks and furniture were torn up and destroyed; the clock was battered with inkwells and broken; the whole assembly became a yelling, infuriated mob that would have done credit to the cellar scenes where met the Jacobins in the French Revolution. Similar scenes have been enacted time and time again in many other States, and these particular instances are not cited except as an illustration of what very often happens and what may be

expected at any time in any of the States of the Union. And instead of such things becoming less frequent, they are becoming more frequent.

Prior to 1872 we had had but one noted case of alleged election bribery connected with a seat upon this floor. Since that time we have had 10, to say nothing of a number of investigations before State legislatures which never reached this body. Take as an illustration the matter now before the Senate. Let us look at it a moment aside from any question of technical guilt and aside from any particular one's moral responsibility for what happened, but simply as an illustration of the vice of the system under which we now elect Senators. If there is any State where the system might be fairly tested, it ought to be in Illinois. Illinois is one of the great Commonwealths of this Union; rich, marvelously rich, in natural wealth and strong in the splendid strain of citizenship which makes up her population. Within her territory is one of the most marvelous cities in the world, and on her bosom sleep the ashes of the truest child of clean and wholesome democracy ever borne upon the earth. No Commonwealth is better fitted in tradition, in pride of history, in the intelligence and manhood of her people, to meet and discharge the duties which properly pertain to the State. Yet her prominence now and during the last year is not due to her great wealth, her industrial prowess, but to that scandal and shame which has been fastened upon her by reason of a senatorial election. The legislature met, spent weeks and months in the vain effort to elect. The whole body became demoralized. Men bartered their honor like the courtesan of Babylon, and at last performed the task amid charges and countercharges, criminations and recriminations, between the legislative members, reminding one of the days when the prong of Catiline was the scepter of power at Rome.

And now we are solemnly told by a committee of this body that so shameless and demoralized, criminal and degraded were many members of that legislature that they can not be believed on oath, and the legislature of that great State, by reason of that election, convened this year under the eye and surveillance of a grand jury. No wonder that one of the old and honored members of this body, a veteran in unselfish devotion to his country, a man who stood stainless in the maelstrom of filth and corruption which stained the reputation of such men as Colfax and Garfield and Blaine, not a demagogue, not a sentimentalist, not a sensationalist, said as he listened to a recital of the facts with reference to that election:

I have begun to despair of the Republic.

Mr. President, the legislature is the arena, narrow and confined, wherein selfish and corrupt influences can successfully operate. The members are few. The chance for combination and approach is always at hand. Why keep that arena for this work? Why give selfish and corrupt influences such strategic advantage? Why not send the fight to the open forum upon which beats the fierce light of public opinion? Why not leave it where it will be settled upon merit, where candidates may appeal to the honor and patriotism of the masses and not be compelled to fight the combinations and trickery of a caucus, where the candidates must also take the people into their confidence before the election certificate is issued? Why compel men to pass through the season of humiliation and shame through which the sitting Member of Illinois is passing if he is guiltless? Why make it possible for men thus to come here if guilty? It is a system vicious and out of date, prepared for a different age and under different conditions than that in which we live. The times demand a different system, a different mechanism for selecting the Members of this great body.

The framers of the Constitution had no conception of the election of a Senator as it now takes place. Their idea was that the legislature would get together, not hampered by previous pledges or party obligations, deliberately look over the State, pick out some conspicuously able and competent man, and elect him. The party spirit of to-day, the dominancy of party in all such matters, was unknown to them. The party system—and in saying this I do not condemn political parties, for they are indispensable to our form of government—the party system has taken away all the virtues and left all the vices of the plan as it was left by the framers. Almost invariably the people have their choice of Senator previous to the meeting of the legislature. Through pledges and otherwise they communicate that choice to their agents, the members of the legislature. If the agent faithfully performs the trust reposed in him, he does nothing more than record the choice of the people who elected him. He simply acts as agent of the principal—the voter. So in this way the plan of the fathers falls. But if the agent violates his trust and votes for some other than the choice of the people, then and only then is the election made without regard to instructions from the popular vote, as the fathers assumed it would be. So, under our party system, the ancient principle can only operate by reason of the violation of a trust or a pledge. That is one of the very conditions which demand a change.

If the agent would always faithfully perform his duty in accordance with instructions as expressed by public opinion there would be far less need of this reform. But he does not do this. And the public demand is ignored and private interests prevail. This condition never for a moment presented itself to the framers of the Constitution. When you read the debates you do not find a single one of them anticipating the evils which a different condition of affairs have brought about. But here it is well to remember a most significant remark of Mr. Madison:

If an election by the people or through any other channel than the State legislatures promised as incorrupt and impartial a performance there could surely be no necessity for an appointment by those legislatures.

Had they been able to foresee the evils with which we now contend it is hardly to be doubted what they would have done. But they were not providing against the evils with which we contend, for without divine power they could not foresee them. But these conditions have now arisen. The remedy is simple and plain. Ought we not therefore to make the change? I believe with Edmund Burke—

That a State without the means of some change is without the means of its conservation.

The same thought is well expressed by the late Senator Hoar, who said:

I do not, of course, claim that the people can not now amend or that they can not now improve our Constitution. That Constitution would itself be a failure if the experience of a hundred years under its operations found the people unfitted to improve it. The lives of our fathers could have been of little worth if under the Constitution they framed there had not grown up and flourished a people who were also fit to deal with the great fundamental constitutional principles of the State. The men who entered upon the untried field of providing by written enactment what were the boundaries and limits of constitutional power and constitutional authority in the State have left children, who, after a hundred years of trial, need not fear to approach and deal with the same great problems.

I assert, and I now challenge the presentation of anything to the contrary, that such a change would not work any change in the fundamental principles of government. The checks and balances are still there. The time and deliberation and conservatism are still there. The equal representation of the States is still there. The individuality and the representation of the whole State is still preserved.

The constitutional limitations imposed by the sovereign power, the provisions in behalf of individual liberty are still preserved. The whole thing may be summed up in this—the principal has discharged the agent because the agent was incompetent, and the principal will now do precisely what the agent was authorized to do. Again I quote from Edmund Burke:

Better to be despised for too anxious apprehension than ruined by too confident a security.

Finally, Mr. President, is it not our duty to give some consideration and some heed to the long standing, well sustained, and almost universal demand of the people for this change? Not, sir, because the people demand it and therefore out of fear we should obey, but because in a demand thus made for more than half a century there must be something of that justice and wisdom for which every believer in a republican form of government must have a profound respect. I can not get away from the belief that in all these great matters, which involve not technical knowledge but rather a broad and wholesome principle of clean and efficient government, the surest and safest guide is the deliberately formed and long-sustained judgment of the people. There is something more than rhetoric in the declaration "that the accumulated intellect of the masses is greater than the greatest brain God ever gave to a single individual." Mr. Bryce, in the closing pages of his interesting and instructive work on our institutions, says:

A hundred times in writing this book have I been disheartened by the facts I was stating; a hundred times has the recollection of the abounding strength and vitality of the Nation chased away these tremors.

What a splendid encomium to the common citizen of the Republic! What an eloquent tribute to the patience, the independence, the tolerance, the considerate and considering patriotism of those in whom the fathers left the ultimate powers of sovereignty! It was by the people that the Constitution was examined, accepted, and ratified. It was by the people that it was preserved. Other people have gone to war for territory, for gold, or for their faith. We are the only people who ever went to war over the construction of and to preserve the Con-

stitution. May we not trust such a people to amend the instrument which they have with their lives preserved?

It has been said that the fathers distrusted the people. Their faith should be interpreted and analyzed in the light of the times in which they lived. When so interpreted and analyzed we are not surprised at their lack of faith, but moved rather by its abiding strength and earnestness. It is written in every feature of the Constitution. It finds its full pronouncement in the full and complete power to amend, and leaving that power where the people if they see fit can initiate the movement themselves. What the fathers said, in effect, was, reflect, weigh, consider; be sure that this is the well-digested thought and judgment of the multitude. When it is found to be so, write it in the charter that such wisdom shall thus be preserved as a fundamental rule and guide for the future.

Now, after more than 50 years of discussion among all classes and in all the fields of political and economic controversy, after it is clear that this change is desired by the sober second thought of the great majority of 90,000,000 people, after Commonwealth following Commonwealth has demanded it, after scandal and corruption have placed their stamp upon the old system, are we taking any chances to accept as our guide in the future the wisdom born of these years of experience and reflection? A reform which has grown to be as ancient almost as the Government itself can not be said to be the result of passion or prejudice or ignorance or folly or fancy. It must have in it a vital, living principle. It must have in it an essential, abiding truth. We can not afford to longer reject it.

There are a vast number of things in this Government in which the people can have practically no voice and upon which they can therefore have but a most indirect influence. That sphere of governmental activity is unfortunately constantly increasing. We are fast becoming a government by commission. Thousands of agents and representatives of the Government deal with matters of almost daily concern to the people who are beyond their selection or dismissal and are fast becoming beyond their reach. With startling and almost mad celerity we are rushing in that direction. Not a Congress but a bureau must be created, with its hundreds of retainers; not a Congress but some part of the Government is pushed a little farther from those in whose welfare we are supposed to work.

Now, of necessity, many of these things must be done in this way; but, on the other hand, there should be every limitation possible to be made. But there are some things which the people may do which they ought to do and which we ought to afford them the most convenient opportunity to do. They may select their political servants who make their laws. They may select the constitutional agents who execute the laws. This is a power which they can exercise and which it will be wholesome for them to continue to exercise. It is our duty to place this power in constant, direct, immediate touch with the people. Dismiss every agent that it is possible to be rid of and go direct to the principal. Give him the responsibility and his own sense of patriotism will appreciate in time that responsibility, and he will not abuse it. It is only under such a system that men may grow to the full stature of citizenship in a republic.

Mr. CLAPP. Mr. President, it would not enter my mind for one moment to hope to add anything to the very learned, logical, and lucid argument of the Senator from Idaho [Mr. BORAH], but there is one thing that I do want to present as supplementary to his argument. Not only is this demand from the people, but the people of this country, just as far as they have been able to do so, in the face of the limitations of the written Constitution, have sought and are seeking to make the election of United States Senators as nearly popular as it can be made. There are not to-day, I believe, in this Republic half a dozen States where the Senatorship is not an issue in the election of the legislature preceding the election of a Senator. From that vague and indifferent condition, where it was simply a general issue discussed by the public, the people have progressed until in some States they have evolved the most complete and perfect system possible, in the light of the limitations of our Constitution, to bring about the popular election of Senators. It does seem to me that it is a travesty upon the exercise of our authority to drive the people to a roundabout way to do that which we should give them the opportunity to do directly and openly.

I want to say now that whatever may become of this proposed amendment there is no power in the Senate or outside of the Senate that will prevent the American people in State after State evolving that same process which they have already evolved to the highest extent in certain States to bring this result about. This movement goes forward with a force that is absolutely resistless, and why should the Senate attempt to stem this tide, not a tide of popular hysteria, but a tide of the earnest effort of the American people to make what free government is destined to be, in the last analysis—popular government?

I merely desired, Mr. President, to supplement with this suggestion the most able remarks of the Senator from Idaho.

EXECUTIVE SESSION.

Mr. CULLOM. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were reopened, and (at 4 o'clock and 30 minutes p. m.) the Senate adjourned until to-morrow, Friday, January 20, 1911, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate January 19, 1911.

SURVEYOR OF CUSTOMS.

Lincoln Mitchell, of Ohio, to be surveyor of customs for the port of Cincinnati, in the State of Ohio, in place of Amor Smith, jr., whose term of office will expire by limitation March 31, 1911.

ASSISTANT TREASURER OF THE UNITED STATES.

George Puchta, of Ohio, to be assistant treasurer of the United States at Cincinnati, Ohio, in place of Charles A. Bosworth, whose term of office will expire by limitation May 26, 1911. This appointment to be effective not sooner than May 26, 1911.

UNITED STATES ATTORNEY.

Guy D. Goff, of Wisconsin, to be United States attorney for the eastern district of Wisconsin, vice Henry K. Butterfield, resigned.

UNITED STATES MARSHALS.

Eugene L. Lewis, of Ohio, to be United States marshal for the southern district of Ohio. A reappointment, his term having expired.

Henry A. Weil, of Wisconsin, to be United States marshal for the eastern district of Wisconsin. A reappointment, his term expiring February 10, 1911.

POSTMASTERS.

OHIO.

Elias R. Monfort to be postmaster at Cincinnati, Ohio, in place of Elias R. Monfort. Incumbent's commission expires March 1, 1911.

John J. Roderick to be postmaster at Canal Dover, Ohio, in place of John J. Roderick. Incumbent's commission expired March 4, 1908.

WISCONSIN.

Herbert L. Peterson to be postmaster at Sturgoen Bay, Wis., in place of Fitz James Hamilton. Incumbent's commission expired December 20, 1910.

CONFIRMATIONS.

Executive nominations confirmed by the Senate January 19, 1911.

COLLECTOR OF INTERNAL REVENUE.

George T. Knott to be collector of internal revenue for the district of Oklahoma.

RECEIVER OF PUBLIC MONEYS.

William Ashley, jr., to be receiver of public moneys at Coeur d'Alene, Idaho.

PROMOTION IN THE NAVY.

Capt. Walter C. Cowles to be a rear admiral.

POSTMASTERS.

ARKANSAS.

Charles T. Bloodworth, Corning.
Joel A. Harper, Rector.
J. E. Herren, Portland.
Laura C. Hutton, Sulphur Springs.
Alexander Jackson, Hoxie.
Samuel Mullen, Ozark.
Robert C. Vance, Benton.
Frank Weldin, Piggott.

CONNECTICUT.

Charles W. Munsinger, Coscob.

GEORGIA.

St. James B. Alexander, Reidsville.
Julien V. Frederick, Marshallville.

ILLINOIS.

Abraham L. Coyle, Gridley.
J. Agnes Olson, Shabbona.
David C. Swanson, Paxton.

INDIANA.

W. F. Moore, West Baden.
Edward L. Throop, Paoli.
Peter H. Zehrung, Cambridge City.

IOWA.

William H. Bowman, Victor.

KANSAS.

James S. Alexander, Florence.
W. I. Biddle, Leavenworth.
Connie Collins, Barnes.
Thomas W. Dare, Gardner.
John A. Davidson, White City.
William Freeburg, Courtland.
Horace C. Lathrop, Blue Rapids.

KENTUCKY.

Smith Rogers, Corydon.

MAINE.

Frank L. Averill, Oldtown.
Charles F. Hammond, Van Buren.

MASSACHUSETTS.

Fred A. Tower, Concord.

MICHIGAN.

Philip P. Schnorbach, Muskegon.

MISSOURI.

Archie T. Hollenbeck, Westplains.

NEW HAMPSHIRE.

Thomas B. Moore, Lincoln.

PENNSYLVANIA.

Alfred W. Christy, Slippery Rock.
Samuel J. Evans, Slatington.
Harry H. Sweeney, Houtzdale.

HOUSE OF REPRESENTATIVES.

THURSDAY, *January 19, 1911.*

The House met at 12 o'clock noon.

Prayer by the Rev. Ulysses G. B. Pierce, D. D.

The Journal of the proceedings of yesterday was read and approved.

POST OFFICE APPROPRIATION BILL.

Mr. WEEKS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the Post Office appropriation bill.

The motion was agreed to; accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 31539) making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1912, and for other purposes, with Mr. STEVENS of Minnesota in the chair.

Mr. WEEKS. Mr. Chairman, I yield one hour to the gentleman from Ohio [Mr. KEIFER].

Mr. KEIFER. Mr. Chairman, I have a request to make in advance. I will not be able to read all the extracts from messages and communications to which I would desire to refer in speaking to-day on the subject of the fortification of the Panama Canal, and I therefore ask in advance unanimous consent to print such matter as I can not read in that time with my speech, and also, Mr. Chairman, I desire to print in connection with that a short speech that I made on the 30th of August last at Brussels, in Belgium, before the Interparliamentary Union that met there.

The CHAIRMAN. The gentleman from Ohio asks unanimous consent to extend his remarks in the RECORD by printing certain documents and speeches as a part of his remarks. Is there objection? [After a pause.] The Chair hears none.

Mr. KEIFER. Mr. Chairman, on a former occasion in this Congress, May 17, 1910, I addressed this House on the neutralization of the Panama Canal, and in support of a resolution—House concurrent resolution 40—introduced by me intended to be declarative of the views of both Houses of Congress on the question. The subject is of the utmost importance, and its further discussion seems necessary to its fuller understanding and to remove grave errors, honestly entertained. There are those who seem to believe that to protect the Panama Canal by an international treaty similar to the treaty or convention of October 29, 1888—some places referred to as of date of October 28, 1888—for the neutralization of the Suez Maritime Canal, would be a surrender of whatever of strategic advantages it may possess in time of war to which the United States may be a party; and still others seem to believe that a guaranteed neutralization of the Panama Canal by such treaty, signed by the great powers, would prevent its being protected if attacked, and would result in the United States losing sovereign control over it. The matter of the supposed strategic value of the canal will be fully considered later along; and it is sufficient to say that no treaty has ever been made or contemplated that does not fully provide for the ample protection of the Panama Canal from intruders, irregular forces, land or naval, marauders of all kinds or character, and also that the United States shall have the right to manage and control it and to regulate and receive its revenues.

All the neutralization treaties provide expressly for these things and guarantee the protection of the canal from injury or destruction by any nation, "in time of war as in time of peace," and consequently guarantee the title of the United States to the canal in perpetuity. Existing treaties with Great Britain, New Granada—now Colombia—and the Republic of Panama, like the Suez Canal convention or treaty, guarantee, in perpetuity, the neutralization, and also the safety, of the canal against molestation or injury by any nation; and the proposed further international treaty with the powers of the world would do likewise. And there is authority, as in the case of the Suez Canal, to keep vessels of war at the port ends of the canal to be employed against any hostile force.

I shall, with the indulgence of the House, consider the question of the neutralization of the Panama Canal under at least four principal heads, namely:

First. Strategic importance of neutralization.

Second. Neutralization—what it signifies.

Third. Policy of United States to neutralize any isthmian canal.

Fourth. Treaty obligations neutralize the Panama Canal.

It seems certain and easy of proof by historical references, by unequivocal treaty obligations now in full force, and by the plainest principles of military and naval strategy, based on the experience of the world's war history, that—

First. Our Government has been wisely committed for about 100 years to the policy of the neutralization of any canal across the Isthmus of Panama, regardless of the country or authority that might construct it.

Second. That existing treaties bind the United States to neutralize the Panama Canal now being constructed.

Third. That to secure its strategic and money value to the United States in time of war to which it may be a party it should be guaranteed by the powers of the world to be neutral and open to the ships of commerce and of war of all nations and flags, including those of belligerent nations.

The great importance financially to our country of having the canal kept open to the commerce of the world in time of war as in time of peace should not be overlooked.

The jingo charge that only the unpatriotic favor the neutralization of the Panama Canal is answered by the Presidents, distinguished statesmen, and high military and naval officers who have favored or now favor the neutralization of any interoceanic canal across the Isthmus of Panama. But of this later.

A summary description of the Panama Canal may aid in understanding what is said as to its neutralization.

The Panama Canal is located in the mid-Tropics, and its general course is north and south across the Isthmus of Panama. It is 50½ miles in length, measured from 50 feet depth of water in the bays of the Atlantic and Pacific Oceans. It is above one-third—about 9 miles on each end—sea water. Commencing in Limon Bay, on the Atlantic side, the first stretch of sea water reaches to Gatun, where there are three successive locks, each 110 feet wide and 1,000 feet in length, and to the great Gatun Dam and the lake formed by the dam shutting off the natural channels and flow of the Chagres River and other minor streams; the lake, when filled, will have an irregular boundary and a surface area of 165 square miles, and the distance across it to be traversed by ships will be about 9 miles, to Bohio; thence by a partially artificial channel of the Chagres River to Bas Obispo and Gamboa, where this river empties from the eastward into the line of the canal, a distance of about 22 miles; thence through the great Culebra Cut about 9 miles to Pedro Miguel, to another lock; thence through it and across—about 1 mile—the Pedro Miguel Lake to Miraflores to two successive locks and through them to sea water again, and thence to the Pacific Ocean. The locks are in duplicate and of